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1	<u>I N D E X</u>					
2						
3	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
4	Ross Hemphill	49	55			
			66			
5			84			
			114			
6	EAMMINATION BY:					
	MR. COFFMAN PG 124					
7			130			
			153			
8			162			
			165			178
9				179		
10	Martin Fruehe	182	187			
			189			
11			203			
			208			215
12				216		
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						

1 E X H I B I T S

2

3	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
4	COMED		
	#1.0,1.1,1.1,11.0	51	54
5	11.1,11.2,20.0&20.1	51	54
	#4.0,4.1 through 4.5,		187
6	4.7 through 4.10,13.0,		187
	13.1 through 13.8,22.0&		187
7	22.1 through 22.8		187
	#1		217
8			
	STAFF CROSS		
9	#1	69	
10	IIEC		
	#1		149
11			
	AG CROSS		
12	1 & 2		202
13	CUB		
	#1		208
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1 JUDGE SAINCOT: By the authority vested in me
2 by the Illinois Commerce Commission, I now call Docket
3 No. 11-0721. It is the matter of the Commonwealth
4 Edison Company and it concerns tariffs and charges
5 submitted pursuant to Section 16-108.5 of the Public
6 Utilities Act.

7 Will the parties identify themselves
8 for the record, please.

9 MR. BERNET: On behalf of the petitioner,
10 Commonwealth Edison Company Richard Bernet, 10 South
11 Dearborn, Suite 4900, Chicago, Illinois 60603,
12 (312) 394-3623.

13 MR. RIPPKE: Also on behalf of Commonwealth
14 Edison Company, Glenn Rippke, John Ratnaswamy, and
15 Carmen Fosco of Rooney, Rippke & Ratnaswamy, LLP. We
16 are at 350 West Hubbard, Suite 430, Chicago 60654.
17 (312) 447-2800.

18 MR. FEELEY: Representing Staff of the Illinois
19 Commerce Commission, John Feeley, John Sagone, Megan
20 McNeill and Jessica Cardoni, the Office of General
21 Counsel, 160 North LaSalle Street, Suite C-800,
22 Chicago, Illinois 60601.

1 MS. LUSSON: On behalf of the People of the
2 State of Illinois, Susan Satter, Karen Lusson and
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5 MR. BALOUGH: Appearing on behalf of the
6 Chicago Transit Authority, Richard Balough, Cheryl
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20 Industrial Energy Consumers, IIEC, Eric Robertson of
21 Lueders, Robertson & Konzen, 1939 Delmar Avenue,
22 Granite City, Illinois 62040 and Conrad R. Reddick,

1 1015 Crest Street, Wheaton, Illinois 60189.

2 MR. JOLLY: On behalf of the City of Chicago,
3 Ronald D. Jolly, 30 North LaSalle, Suite 1400,
4 Chicago, Illinois 60602.

5 JUDGE SAINSOT: And am I correct that there are
6 no appearances by phone?

7 (No response.)

8 JUDGE SAINSOT: Okay. Good. Mr. Rippie.

9 MR. RIPPIE: Good morning, your Honors. The
10 Company's first witness is Dr. Ross Hemphill. He is
11 in the room.

12 (Witness sworn.)

13 ROSS HEMPHILL, Ph.D.,
14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY

18 MR. RIPPIE:

19 Q Dr. Hemphill, could you please state and
20 spell your name for the court reporter.

21 A My name is Ross C. Hemphill, R-o-s-s,
22 middle initial C, H-e-m-p-h-i-l-l.

1 Q Now, is there before you three documents
2 that have been previously designated as your direct
3 rebuttal and surrebuttal testimonies?

4 A Yes, I have them.

5 Q Let's first turn to your direct testimony
6 designated as ComEd Exhibit 1.0 with Attachments 1.1
7 and 1.2 constituting 22 pages of narrative testimony;
8 is that correct?

9 A That's correct.

10 Q Dr. Hemphill, are there any additions or
11 corrections that you need to make to Exhibit 1.0 or
12 the attachments thereto?

13 A No, there are not.

14 Q If I were to ask you the same questions as
15 appear on Exhibit 1.0 today, would you give these
16 same answers?

17 A Yes.

18 Q Let's turn to Exhibit, 11.0 which together
19 with the Attachments 11.1 and 11.2 constitute your
20 rebuttal and I believe that's 33 pages of narrative
21 testimony; am I correct?

22 A That's correct.

1 Q Dr. Hemphill, are there any additions or
2 corrections you need to make to Exhibit 11.0?

3 A Yes, there are. There's couple of typos
4 that flipped by starting at Line 100.

5 JUDGE SAINSOT: Mr. Rippie, why don't you show
6 me a copy of those and I can -- of 11.0 and I can
7 make the corrections right on the copy.

8 MR. RIPPIE: Here's another set of each with
9 the verification and here's the third set.

10 (Whereupon, ComEd
11 Exhibit Nos. 1.0, 1.1, 1.2, 11.0,
12 11.1, 11.2, 20.0 and 20.1 were
13 marked for identification.)

14 JUDGE SAINSOT: Am I correct that these are
15 just typos?

16 MR. RIPPIE: Yes.

17 THE WITNESS: Yes.

18 MR. RIPPIE: There are three single word
19 changes.

20 JUDGE SAINSOT: All right. Mr. Hemphill, could
21 you lead me to the first page?

22 THE WITNESS: Page 5 of the rebuttal testimony.

1 JUDGE SAINSOT: Okay.

2 THE WITNESS: Line 100. The word

3 "reasonability" should be changed to

4 "reasonableness."

5 The second typo is on Page 22,

6 Line 463.

7 JUDGE SAINSOT: Okay. I'm there.

8 THE WITNESS: The word "result" in that line

9 should be "deleted." So that -- I'll read after the

10 comma, but ComEd is entitled to adopt the position

11 that ComEd believes is just.

12 BY MR. RIPPIE:

13 Q And subject to those two corrections,

14 Dr. Hemphill, if I were to ask you the same questions

15 as appear on ComEd Exhibit 11, would you give the

16 same answers today?

17 A Yes.

18 Q Please turn to your surrebuttal testimony,

19 which has been designated as ComEd Exhibit 20 with an

20 attachment, ComEd Exhibit 20.1 constituting, I

21 believe, 37 pages of narrative testimony; is that

22 correct?

1 A That's correct.

2 Q Are there any additions or corrections you
3 need to make to ComEd Exhibit 20?

4 A Yes. There's one typo there.

5 JUDGE SAINSOT: Okay. Where are we? With
6 ComEd Exhibit 20?

7 MR. RIPPIE: It's in the packet you have there.

8 JUDGE SAINSOT: All right. What page again?

9 THE WITNESS: It is Page 8.

10 JUDGE SAINSOT: Page 8, okay. And line again?
11 I'm sorry.

12 THE WITNESS: Line 158.

13 JUDGE SAINSOT: 158. Okay. I'm there.

14 THE WITNESS: And at the end of that line,
15 there's "persist" which should be deleted.

16 JUDGE SAINSOT: Okay. Any other typo on this?

17 THE WITNESS: None.

18 BY MR. RIPPIE:

19 Q And subject to that single correction, if I
20 were to ask you the same questions that appear in
21 ComEd Exhibit 20.0, would you give the same answers
22 today?

1 A Yes.

2 MR. RIPPIE: Your Honor, that concludes the
3 direct examination of Dr. Hemphill. I would offer
4 into evidence the following exhibits: ComEd Exhibit
5 1.0, 1.1, 1.2, 11.0, 11.1, 11.2 and 20.0 and 20.1.

6 JUDGE SAINSOT: Any objection?

7 (No response.)

8 JUDGE SAINSOT: Okay. Hearing none, your
9 motion is granted, Counsel. And for the record,
10 ComEd Exhibit 1.0, 1.1, 1.2, 11.0, 20.0 and 20.1 are
11 admitted into evidence.

12 MR. RIPPIE: And 11.1 and 11.2.

13 JUDGE SAINSOT: Okay. 11.1 and 11.2. Thanks
14 for pointing that out.

15 Those are admitted as well.

16 (Whereupon, ComEd
17 Exhibit Nos. 1.0, 1.1, 1.2,
18 11.0, 11.1, 11.2,
19 20.0 and 20.1 were
20 admitted into evidence.)

21 MR. RIPPIE: And the witness is available for
22 cross.

1 MS. McNEILL: Staff would like to proceed first
2 if that's okay with your Honors of cross of
3 Mr. Hemphill, but I did want to check to see if Staff
4 was able to hear Mr. Hemphill.

5 So, Scott, were you able to hear
6 Mr. Hemphill when he was speaking?

7 A VOICE: No, it's very faint. Perhaps if the
8 mic could be moved a little closer.

9 MS. McNEILL: Okay. Scott, we moved it closer.
10 Just let me know if you can't hear.

11 A VOICE: Thank you.

12 CROSS-EXAMINATION

13 BY

14 MS. McNEILL:

15 Q And, Mr. Hemphill, try to speak up.

16 A Yeah, if it would help, I could stand
17 closer to it as well.

18 Q I don't want you to stand.

19 A I don't mind.

20 JUDGE SAINSOT: I think that's okay.

21 BY MS. McNEILL:

22 Q Good morning, Mr. Hemphill. My name is

1 Megan McNeill and I represent Staff.

2 A Good morning.

3 Q I have some brief questions and then
4 Mr. Sagone is going to do some.

5 If I could refer you to your
6 surrebuttal testimony on Page 8 to your Exhibit 20.0.
7 If I could refer you to Lines 165 to 168.

8 A Yes.

9 Q In there you state, Even if actual costs
10 are finally recognized and are added via
11 reconciliation, paren with interest, end paren, to
12 the revenue requirements, customers and utilities
13 will have been harmed by the increase to uncertainty
14 volatility and the cost of larger reconciliation
15 adjustments; is that correct?

16 A Yeah, that's the testimony.

17 Q Mr. Hemphill, do you have an opinion on
18 whether the reconciliation adjustments will be more
19 often over or under recovered?

20 A I do not.

21 Q Are you familiar with the components of
22 plant included in rate base in the formula rates?

1 A Yes.

2 Q Do you agree that in setting rates for the
3 year 2012, the plant in rate base includes historic
4 2010 plant as well as projected 2011 plant additions?

5 A Yes.

6 Q Now, that rate base will be one of the
7 components used in the 2012 reconciliation; is that
8 correct?

9 A That rate base being which?

10 Q The rate base that includes the historic
11 2012 plant as well as the projected 2011 plant
12 additions. That will be -- that will be used as one
13 of the components in the 2012 reconciliation.

14 A You said historic 2012 plant?

15 Q The historic 2010 plant as well as the
16 projected 2011 plant additions.

17 A Well, the reconciliation would not -- would
18 no longer be projected. The reconciliation would be
19 actual.

20 Q But when we -- in the reconciliation, we
21 will be comparing the 2012 actual rate base, which
22 will ultimately include the historic 2010 plant, the

1 2011 plant and the 2012 plant; is that correct?

2 A I'll continue to try to clarify this

3 because I think it's --

4 Q Let me rephrase. Let me rephrase. In the

5 2012 reconciliation, we'll be comparing the 2012

6 actuals to 2010 plant and 2011 additions?

7 MR. RIPPIE: Can I just ask for a

8 clarification, please, and I think maybe this will

9 solve the problem. When you say "the 2012

10 reconciliation," do you mean the reconciliation that

11 occurs in 2012 or the reconciliation of the 2012?

12 MS. McNEILL: The reconciliation of the 2012.

13 THE WITNESS: So you're referring to a filing

14 on May 1st, 2013?

15 BY MS. McNEILL:

16 Q Yes.

17 A Okay.

18 Q Also, I've had a request for you to speak

19 louder, if you can.

20 JUDGE SAINSOT: Miss McNeill, you're a little

21 faint, too.

22 THE WITNESS: Should I stand up?

1 JUDGE SAINCOT: Well, let's try this again.

2 THE WITNESS: So this is a filing that will

3 occur on May 1st, 2013.

4 BY MS. McNEILL:

5 Q Yes.

6 A And you're asking what will be included in

7 the reconciliation on May 1st, 2013?

8 Q Yes.

9 A And I believe you stated that it would be

10 the 2012 actual?

11 Q Right. So the rate base -- okay. When we

12 set rates for 2012, the plant in rate base will

13 include the historic 2012 plant as well as projected

14 2011 plant additions; is that correct?

15 A I really -- I apologize, but I'm going to

16 try to clarify this now because I think there's a

17 misunderstanding you know, throughout the written

18 record thus far as to how this works. I am not an

19 expert as to how it works, Miss Houtsma is really the

20 best person to get into details of this, but at a

21 high level, I'd like to clarify it as best I can at

22 this point.

1 In 2013 -- May 1st, 2013, the filing
2 will be for rates that would go into effect at the
3 beginning of the year 2014. That filing on May 1st
4 will include a reconciliation. That reconciliation
5 will be on 2012 actual that was projected in the
6 previous regulatory process. Is that your
7 understanding of it?

8 Q Right. I just wanted to make sure.

9 Now, in the reconciliation of the
10 20- -- that we do for the 2012 actuals, we will
11 compare 2012 actuals to 2010 plant and the 2011
12 additions; is that correct?

13 A I just have to state it the way I
14 understand it because I really am sorry, I didn't
15 understand what you just said. The May 1st, 2013
16 filing will include a number of -- there's two main
17 components that we talk about that's in these May 1st
18 filings and so when you get to 2013, it's a good
19 example because in 20- -- on May 1st, 2013, there
20 will have been rates that were put into effect at the
21 end of 2012, which included a projection of capital
22 for 2012.

1 By the time you get to May 1st, 2013,
2 there's no longer a need for projections, it's an
3 actual and, therefore, on 2013 -- one of the
4 components on the May 1st, 2013 filing will be a true
5 up, if you will, a reconciliation between what was
6 projected in the previous proceeding process and what
7 is evident, okay, is actual.

8 Q Right.

9 A Okay.

10 Q I think we're all on the same track.

11 A Okay.

12 Q But I think -- I'm going to move on and
13 maybe we can follow up with Mrs. Houtsma on some of
14 that.

15 Now, if we could -- still on Page 8 of
16 your surrebuttal testimony, Lines 169 through 171 you
17 state there that Staff witnesses argue for the
18 continued imposition of rules applicable to pro forma
19 test year adjustments to the annual formula rate
20 process; is that correct?

21 A Yes, that's the question.

22 Q Then on Page 9, Lines 172 through 174, you

1 state, In historical ratemaking, the utilities were
2 allowed and in some cases, required to make pro forma
3 adjustments to test year costs for known immeasurable
4 conditions outside of the test year; is that correct?

5 A Yes.

6 Q Mr. Hemphill, in Mr. Bridal's direct and
7 rebuttal testimony, he doesn't refer to his
8 adjustment plant additions as a pro forma adjustment,
9 does he?

10 A I'll take your word for it that he doesn't
11 use those words.

12 Q Okay. And to follow up, in Mr. Bridal's
13 direct and rebuttal testimony, he also doesn't use
14 the term "known immeasurable," does he?

15 A Again, I would have to review the whole
16 testimony again before me, but I'll accept --

17 Q Subject to check?

18 A -- your word for it.

19 Q Thank you.

20 A Yes.

21 Q So based on those two questions, you would
22 agree that your description in your surrebuttal

1 testimony of Mr. Bridal's plant in service adjustment
2 as a pro forma adjustment for a known immeasurable
3 change is merely your characterization of his
4 testimony rather than the way Mr. Bridal defined his
5 adjustment himself; is that true?

6 A It is my characterization, however, I think
7 it's an important characterization to bring out in
8 this proceeding as to the difference between how
9 things were done when you had test years as opposed
10 to the formula process that we're talking about here.

11 Q Okay. On Page 10 of your surrebuttal
12 testimony, Lines 210 to 212, there you refer to
13 Mr. Bridal's and Staff -- also Staff witness
14 Mr. Rashid and you say, They incorrectly argue that
15 projections must continue to be based on specific
16 projects; is that correct?

17 A Yes.

18 Q However, in Mr. Bridal's testimony, he
19 doesn't adjust specific projects as opposed to the
20 aggregate projection for plant additions, does he?

21 A Oh, my understanding is that -- I don't
22 know which witness was which, but there were -- to

1 use my own term, there was a -- an individual time to
2 individual projects or a specific time to individual
3 projects in the evaluation that was done that led to
4 the conclusion of Staff.

5 Q Okay. Would you accept, subject to check,
6 that Mr. Bridal's testimony -- in his testimony, he
7 doesn't adjust specific projects as opposed to the
8 aggregate projection for plant additions?

9 A Okay. I'll accept that.

10 Q And then another follow up question,
11 Mr. Hemphill, you'd agree then that your description
12 here in your surrebuttal testimony of Mr. Bridal's
13 plant in service adjustment as adjusting specific
14 projects is merely your characterization of his
15 testimony rather than the way Mr. Bridal himself
16 defined his adjustment; is that true?

17 A I'll certainly accept that it's my
18 characterization of the way in which the formula
19 process is being treated and how it's being treated
20 in a similar manner to when there were test years.

21 Now, the specifics in terms of how the
22 accounting works and such, we'll have ample

1 opportunity to examine when we talk with Mr. Bridal
2 and Rashid and also in the testimony of Miss Houtsma.

3 Q Thank you. A couple more questions. If we
4 could move to Page 12 of your surrebuttal testimony,
5 Lines 251 to 252.

6 A Okay.

7 Q And there you testify that the FERC Form 1
8 for any given year lists the total plant as of the
9 end of that year because in your opinion, that figure
10 captures the activity for the year; is that correct?

11 A That's correct.

12 Q Mr. Hemphill, referring you to the FERC
13 Form 1 for any given year, does the balance of plant
14 in service as of the end of the year accurately
15 represent the balance of plant that was actually in
16 service for the entire year?

17 A No, it is the plant that was in service at
18 the end of that year. So it represents that year's
19 activity, if you will, in terms of total investment.

20 MS. McNEILL: Thank you. I do not have any
21 further questions for Mr. Hemphill, however, my
22 co-counsel, Mr. Sagone has some questions.

1 CROSS-EXAMINATION

2 BY

3 MR. SAGONE:

4 Q Good morning, Dr. Hemphill.

5 A Good morning.

6 Q I'm John Sagone and I've got a few
7 questions for you as well.

8 First, I just wanted to ask you sort
9 of some clarifying questions regarding customer and
10 meter charges.

11 A Yes.

12 Q Now, would you agree that the Company's
13 proposed customer and meter charges combined recover
14 50 percent of total delivery service costs for both
15 the residential and watt-hour classes?

16 A That was the intention, yes.

17 Q And do you know what percent of fixed costs
18 for the residential class are recovered by the
19 combination of your proposed customer and meter
20 charges?

21 A You mean precisely what percent? Could you
22 repeat the question? I'm sorry.

1 Q Sure. Do you know what percent of fixed
2 costs for the residential class --

3 A Oh.

4 JUDGE SAINSOT: Would that be a no,
5 Dr. Hemphill?

6 THE WITNESS: No, I'm thinking through it.

7 JUDGE SAINSOT: Okay. Proceed.

8 THE WITNESS: I believe it's approximately
9 50 percent.

10 BY MR. SAGONE:

11 Q And do you know what percent of fixed costs
12 for the watt-hour class are recovered by the
13 combination of your proposed customer and meter
14 charges?

15 A Not -- just for the watt-hour, I can't say.

16 Q Dr. Hemphill, I'd like to direct you to
17 Page 29 of your surrebuttal testimony, specifically
18 Lines 606, 607.

19 A Okay.

20 Q In there you state, Mr. Lazare continues to
21 argue that the 2010 rate case order directs that
22 customer and meter charges be set at 50 percent of

1 fixed costs; is that correct?

2 A Yes.

3 Q And that's in -- and in making that

4 statement, you're referring to Mr. Lazare's rebuttal

5 testimony; is that correct?

6 A That's correct.

7 Q And I notice that you have in quotation

8 marks, that customer and meter charges be set at

9 50 percent of fixed costs; is that correct?

10 A Yes.

11 Q Are you directly citing Mr. Lazare with

12 that quotation?

13 A No.

14 Q And do you have a copy of the Comission

15 order for Docket 10-0467 with you today?

16 A I do not.

17 MR. SAGONE: Your Honor, may I approach?

18 JUDGE SAINSOT: You may. Mr. Sagone, can we

19 mark this as a cross exhibit?

20 MR. SAGONE: Staff doesn't intend to enter it

21 into evidence.

22 JUDGE SAINSOT: Let's just mark it as a cross

1 exhibit any way so we're clear. We'll call it Staff
2 Cross Exhibit A.

3 MR. SAGONE: Can we make that 1?

4 JUDGE SAINSOT: 1.

5 (Whereupon, Staff Cross
6 Exhibit No. 1 was
7 marked for identification.)

8 JUDGE SAINSOT: And for the record, that's the
9 final order in Commonwealth Edison's last rate case,
10 which was 10-0467 and it is -- not including
11 appendixes --

12 MR. SAGONE: The appendixes should be in there.

13 JUDGE SAINSOT: No, I'm just -- the length is
14 317 pages, not including appendixes.

15 BY MR. SAGONE:

16 Q And, Dr. Hemphill, you are familiar with
17 the order in Docket 10-0467; is that correct?

18 A I am indeed.

19 Q And can you point to me any place in that
20 order -- in the order in Docket 10-0467 where the
21 Commission states that fixed charges should be set to
22 recover 50 percent of total costs?

1 A Before I page through this and try to find
2 whether or not there is the exact line, I have to
3 state what my position is; and the Company's position
4 is that the record was pretty complete in this docket
5 in terms of what the intention was in the straight
6 fixed variable design. There was only one straight
7 fixed variable design that was introduced into
8 evidence and everything that was referred to as a
9 straight fixed variable design during that procedure
10 or proceeding was the one that was introduced by
11 Commonwealth Edison. Therefore -- although maybe the
12 words may not match up throughout the whole
13 proceeding, that was the intention of the design and
14 the intention was the way in which the Company design
15 it.

16 Q And that was the intention of the Company's
17 design; correct?

18 A That was the intention of the Company's
19 design and it is the Company's position that that was
20 the intention of the order.

21 Q So going back to the question, can you
22 point me to any place in the order in Docket 10-0467

1 where the Comission states that fixed charges should
2 be set to recover 50 percent of total costs?

3 A Again, without looking through every page
4 here, perhaps not. However, that was the design that
5 was being deliberated in this case.

6 Q You can look through the order if you wish.

7 JUDGE SAINSOT: While we're pausing here, I
8 note that Mr. Gower came in after appearances were
9 made.

10 MR. GOWER: If I might enter my appearance,
11 Judge. Thank you very much. On behalf of Metra, I'm
12 Ed Gower. I'm with Hinshaw & Culbertson, LLP,
13 400 South Ninth Street, Suite 200, Springfield,
14 Illinois 62701. My telephone number is (217)
15 467-4916.

16 Thank you, your Honor.

17 JUDGE SAINSOT: And also for those of you who
18 came in late, we are encouraging every one to take
19 their jackets off. It's warm in here.

20 MR. RIPPPIE: Your Honor, if we could -- your
21 Honor, if we could save some time, I think we can
22 stipulate that the three words, quote "of total cost"

1 closed quote, don't appear anywhere in the order
2 based on an electronic search, so that saves us since
3 the three words "of total cost" are part of the
4 question. If those three words don't appear, then
5 the statement that you read doesn't appear.

6 MR. SAGONE: Well, actually, it was
7 specifically 50 percent of total cost.

8 MR. RIPPPIE: Yeah, but -- I didn't search for
9 50 percent because I can't tell whether 50 was
10 written out or in numerals or percent, so I just
11 searched for "of total cost" and "of total cost"
12 doesn't appear. So if "of total cost" doesn't, then
13 50 percent of total cost doesn't appear.

14 THE WITNESS: I'll accept that.

15 BY MR. SAGONE:

16 Q And can you point me to any place in the
17 10-0467 order where the Comission states that
18 residential or watt-hour customer charges should
19 recover a share of variable costs?

20 A If you're stating it's not in the order,
21 I'll accept that, subject to check.

22 Q Can you point to any place in the 10-0467

1 order where the Comission states that any residential
2 fixed or delivery charges should be based on the
3 recovery of total costs?

4 A Again, I'll accept that subject to check.

5 Q Now, in Docket 10-0467 you originally
6 proposed recovery of 60 percent of total costs
7 through fixed charges for residential and watt-hour
8 customers that would move into additional steps to
9 80 percent of total costs; is that correct?

10 A That's correct.

11 Q And the Comission did not accept any of
12 those percentages that you proposed in that case; is
13 that correct?

14 A That is correct.

15 Q Dr. Hemphill, if you could turn to
16 Page 30 of your rebuttal testimony, Line 621 through
17 624?

18 A I am there.

19 Q In there you state, For each of the subject
20 delivery classes, there are four base rate delivery
21 service charges, two of which, dash, the DFC and the
22 Illinois Electricity Distribution Tax charge, paren,

1 quote, IEDT, end quote, end paren, are volumetric
2 charges because they are applied on a per kilowatt
3 hour basis; is that correct?

4 A That's correct.

5 Q So the only two volumetric charges in
6 current rates for residential and watt-hour customers
7 are the DFC, or Distribution Facilities Charge, or
8 the IEDT; is that correct?

9 A That's correct.

10 Q I'd like to explore the IEDT charge a bit
11 more. Referring back to the order in 10-0467, if I
12 could direct you to Page 285 of that order.

13 A Okay.

14 Q In the second paragraph of the Commission
15 analysis and conclusion section, the order states
16 there, The Commission agrees with Staff that since the
17 IEDT is related to usage, cost causation principles
18 would argue for recovery through a third kilowatt
19 hour charge for all customers.

20 Do you see that?

21 A Yes.

22 Q And would you agree that in the next

1 paragraph on Page 285 of the 10-0467 order, the
2 Comission adopted a separate volumetric charge to
3 recover the IEDT tax --

4 A Yes.

5 Q -- in the order and I'll refer you
6 specifically to the following language: The
7 Comission adopts ComEd's proposal to modify its rate
8 design to provide a separate volumetric charge for
9 the recovery of the Illinois Electricity Distribution
10 Tax and uncollectible costs associated with the
11 application of the tax for all the reasons stated
12 herein.

13 A Yes, that's what it says.

14 Q So you would agree?

15 A That's what the order says.

16 Q And to your knowledge, was the IEDT charge
17 approved by the Comission to recover any other costs
18 besides the usage-based IEDT tax and IEDT related
19 uncollectibles?

20 A No.

21 Q And to your knowledge, was the IEDT charge
22 developed by the Company for its compliance rates

1 designed to recover any other costs besides the
2 usage-based IEDT tax and IEDT related uncollectibles?

3 A That's how it was designed, yes.

4 Q Now, Dr. Hemphill, would you agree that the
5 Company considers all system costs not related to the
6 IEDT to be fixed costs?

7 A Yes.

8 Q And just to clarify, those variable costs
9 are IEDT costs and IEDT related uncollectibles; is
10 that correct?

11 A Yes.

12 Q Now, does the Company propose that any of
13 the fixed costs on the ComEd system be recovered
14 through the IEDT charge?

15 A No.

16 Q Now, Dr. Hemphill, if I could direct you to
17 Page 29 of your surrebuttal testimony.

18 A I'm sorry, what page was that again?

19 Q Page 29.

20 A Okay.

21 Q And on Line 609 through 611 you state the
22 following concerning Staff Witness Lazare's

1 testimony, quote, He is claiming that the order says
2 the customer and meter charges can only recover
3 50 percent of fixed costs and by implication, that
4 all variable costs must be recovered through
5 volumetric rates; is that correct?

6 A Yes.

7 Q Now, didn't you previously agree that the
8 only variable costs on the system are the IEDT tax
9 and IEDT related uncollectibles?

10 A Yes.

11 Q And you also agreed that these costs are
12 recovered through the volumetric IEDT charge; is that
13 correct?

14 A Correct.

15 Q So are there any other variable costs on
16 the system that you believe should be recovered
17 through fixed customer and meter charges?

18 A No.

19 Q Dr. Hemphill, if I could direct you back to
20 the Comission order for Docket 10-0467 on Page 232.

21 A 230 what?

22 Q 232. Now, in the last paragraph -- are you

1 there?

2 A Yes, I am.

3 Q In the last paragraph of the Comission's

4 conclusion on the SFV issue, which would be the

5 second full paragraph on the page, sort of in the

6 middle of the paragraph.

7 A Did you say 232?

8 Q Yes. Page 232.

9 JUDGE SAINSOT: Is this under the subheading,

10 Decoupling the NRDC proposal? 232? Is that correct?

11 MR. SAGONE: Can you just give me a minute?

12 JUDGE SAINSOT: Sure.

13 MR. SAGONE: I lost it myself.

14 JUDGE SAINSOT: Go ahead.

15 BY MR. SAGONE:

16 Q Okay. So it is Page 232 and it's the

17 second full paragraph sort of down in the middle

18 about the fourth sentence, it states, In an effort to

19 gradually move towards more realistic cost causation

20 and to avoid rate shock, the Comission concludes that

21 the use of volumetric charges be reduced so that they

22 recover 50 percent of fixed delivery service costs.

1 Do you see that?

2 A I do.

3 Q Then if you could turn to Page 28 of your

4 rebuttal testimony.

5 JUDGE SAINSOT: This is Page 28, Mr. Sagone?

6 MR. SAGONE: Yes.

7 THE WITNESS: Okay.

8 BY MR. SAGONE:

9 Q On Lines 573 to 576. Where you state

10 quote, In my view, the sentence should be read to

11 express the Comission's desire consistent with the

12 balance of the order to reduce the reliance on

13 volumetric charges so that they recover no more than

14 50 percent of fixed costs.

15 Do you see that?

16 A Yes.

17 Q Now --

18 JUDGE SAINSOT: Excuse me. Is this his

19 rebuttal?

20 MR. SAGONE: This is his rebuttal, yes.

21 JUDGE SAINSOT: Okay. I was in the

22 surrebuttal. Sorry.

1 MR. SAGONE: Would you like me to repeat that?

2 JUDGE SAINSOT, no that's okay, but thanks.

3 BY MR. SAGONE:

4 Q Now, referring back to that sentence in the

5 10-0467 order, would you agree that that sentence

6 said that volumetric charges should recover

7 50 percent of fixed delivery services costs?

8 A Yes, that's what the sentence says.

9 Q And there is no reference in that sentence

10 to either no more than or no less than; is that

11 correct?

12 A That's correct. Sentence.

13 Q So if volumetric charges recover 50 percent

14 of fixed delivery services costs, what charges are

15 there left to recover the remaining 50 percent of

16 fixed costs?

17 A Could you repeat that?

18 Q Yes. So if volumetric charges recover

19 50 percent of fixed delivery services costs, what

20 charges are there left to recover the remaining

21 50 percent of fixed costs?

22 A It would be volumetric charges.

1 Q So your answer is volumetric charges?

2 A That was my answer, yes.

3 Q If I could just ask you one more time, so
4 if the volumetric charges recover 50 percent of fixed
5 delivery services costs, what charges are there left
6 to recover the remaining 50 percent of fixed costs,
7 you're saying volumetric --

8 A Fixed charge. I'm sorry. I thought the
9 question was, if volumetric charges recover 50
10 percent, what charges are left to recover -- this is
11 an if then; right? Okay. It's not saying what is,
12 but it's an if then and -- so if volumetric are
13 recovering 50 percent, then fixed charges would
14 recover -- would be available to recover the other.

15 Q So what charges are recovering those
16 50 percent of fixed costs?

17 A Okay. Let's call fixed costs the pie, 100
18 percent and you're asking -- you can ask it two
19 different ways; right? If volumetric charges are
20 recovering 50 percent, then what is left to recover
21 the other 50 percent? It would be fixed charges.

22 If fixed charges are recovering

1 50 percent, what would be available to recover the
2 other 50 percent of fixed costs volumetric charges?

3 Q So what are the fixed charges recovering
4 the remaining 50 percent of fixed costs?

5 A The customer charge and the meter charge.

6 Q So returning to the Comission's order in
7 Docket 10-0467, can you point to any place in the
8 10-0467 order where the Comission states that a share
9 of variable costs should be recovered through either
10 customer or meter charges?

11 A No.

12 Q And can you point to any place in the
13 10-0467 order where the Comission states that either
14 fixed customer and meter or usage charges should be
15 based on 50 percent of revenues?

16 A No.

17 Q Dr. Hemphill, if I can refer you to Page 30
18 of your surrebuttal testimony, Line 623 to 625. Now,
19 you state there and I quote, As I said in my rebuttal
20 testimony, the order imposes no restriction at all on
21 the share of total costs recovered through fixed
22 charges.

1 A That's correct.

2 Q Now, to your knowledge, does the order in
3 10-0467 make any statement about what share of total
4 costs should be recovered through fixed charges?

5 A I can't say that it does.

6 Q So would that be a no?

7 A No -- or yes, it would be a no.

8 Q And to your knowledge, does the order in
9 10-0467 make any statement about what share of total
10 costs should be recovered through variable charges?

11 A No.

12 MR. SAGONE: I have nothing further at this
13 time.

14 JUDGE SAINSOT: Mr. Feeley, am I to take it
15 that you have questions?

16 MR. FEELEY: No, I do not.

17 JUDGE SAINSOT: Okay. Just asking. So is
18 that -- does that conclude Staff?

19 MR. SAGONE: Yes, it does, your Honor.

20 JUDGE SAINSOT: Okay. Who is next?

21 Mr. Brady, there are some seats way at
22 the other side.

1 CROSS-EXAMINATION

2 BY

3 MS. LUSSON:

4 Q Good morning, Mr. Hemphill.

5 A Good morning. How are you?

6 Q Fine. Thanks. How are you?

7 A Very good.

8 Q First, I'd like to start with a few
9 questions about your background. You're not an
10 accountant by education or training, are you?

11 A No. I started to major in accounting, but
12 they said I didn't have the personality.

13 Q Interesting. Okay. So you are not a CPA;
14 that's right?

15 A I am not.

16 Q Would you consider yourself an expert on
17 regulatory accounting?

18 A No. We have experts that have test- --
19 that are testifying in this docket on that.

20 Q And are you typically involved in the
21 Company's preparation of FERC Form 1 filings?

22 A I am not.

1 Q Have you ever overseen ComEd's or any other
2 company's FERC Form 1 filing?

3 A I have, but it was long ago.

4 Q But not ComEd's?

5 A But not ComEd's, no.

6 Q Turning to Page 3 of your direct testimony.
7 Actually, let's turn to your Exhibit 1.2.

8 Your Exhibit 1.2 is intended to be
9 sort of an overview or an explanation of the
10 Company's view of the regulatory framework that was
11 established by the new Section 16-108; is that
12 correct?

13 A Yes.

14 Q Would you agree that, as I understand the
15 Company's position, that Rate DSPP, after it's been
16 reviewed by the Commission, will serve as the template
17 for calculating ComEd's rates for every -- each year
18 in the foreseeable of the future through the sunset
19 of this act?

20 A Yes. Unless modified by the Commission.

21 Q And to the extent that Rate DSPP -- that
22 the Rate DSPP that is proved in this docket serves as

1 the template going forward for rate setting, would
2 you agree that it is important for the Comission to
3 carefully investigate each element of rate DSPP and
4 the formula ratemaking mechanism that's been proposed
5 by ComEd in order to ensure that the Company's
6 delivery service rates are just and reasonable?

7 A Yes.

8 Q In fact, the Comission has been given 240
9 days or actually eight months to do just that, hasn't
10 it?

11 A In this docket?

12 Q Yes.

13 A I didn't count the days, but I'll subject
14 that.

15 Q Subject to check.

16 So, the -- ComEd's Rate DSPP does not
17 necessarily consist of ComEd handing the Comission
18 its FERC Form 1 filing and saying, These are the
19 rates you should put in effect, is it?

20 A That's correct.

21 Q Now, at Page 3 of your Exhibit 1.2, you
22 note that at the same time ComEd files Rate DSPP,

1 it's also filing the data that populates the formula
2 in using calendar year 2010 plus projected plant
3 additions, updated depreciation reserve and
4 depreciation expense; is that correct?

5 A For 2011?

6 Q Right.

7 A Yes.

8 Q On that plant part?

9 A Yes.

10 Q And on Page 4 you note that the Comission
11 will hold hearings and approve -- or approved with
12 modification Rate DSPP and that approval of your case
13 is filed would initially reduce rates by 54 million
14 and that's the Company's position; is that correct,
15 at least initially?

16 A Initially.

17 Q At the bottom of Page 4, you discuss the
18 annual updates to the reconciliations that must occur
19 under Rate DSPP. Would you agree with me that the
20 process you're describing could be characterized as a
21 two-stage process in that each year, rates are set
22 using formula inputs for expenses in rate base but

1 these rates are ultimately then trued up to reflect
2 actual costs in a subsequent reconciliation
3 proceeding?

4 A Yes.

5 Q Now, on Page 5 you state, The second
6 components of the May 1st filing is a reconciliation
7 to true up previously approved revenue requirements.

8 Does this true up provision help to
9 ensure that ComEd will recover all of its incurred
10 costs during the year that was the formula rate year?

11 A I would state it differently because it's
12 symmetrical. It assures that the costs are properly
13 reflected in the rates ultimately. This could work
14 upward or it could work downward.

15 Q Let's go to your direct testimony at
16 Page 19, please, Line 372. There you state that
17 importantly the annual reconciliation proceedings
18 ensure that ComEd recovers no more than its actual
19 cost of service.

20 Do you see that?

21 A Yes.

22 Q With respect to that statement, does -- in

1 your opinion, does the reconciliation provide a
2 safeguard for any concerns the Comission may have
3 regarding inclusion of projected plant investment
4 amounts in the Company's future annual filings?

5 A That was -- I was going to answer, but I
6 didn't pay close enough attention to the last few
7 words of your question, so do you mind repeating it.

8 Q Sure. In your opinion, does the
9 reconciliation provide a safeguard for any concerns
10 the Comission may have regarding inclusion of
11 projected plant investment amounts in the Company's
12 future annual filings?

13 A That was the intention and I believe it
14 should accomplish that.

15 Q Does, in your opinion, the reconciliation
16 provide an opportunity for ComEd to fully recover any
17 increases in its recorded expenses that may have
18 occurred if actual expenses have grown to exceed the
19 amounts used to set the initial rates for the year
20 being reconciled?

21 A It provides the opportunity. Again, it's
22 subject to examination by the Comission and all

1 parties through the proceeding.

2 Q In the sentence when you say that ComEd --
3 at Line 72 -- will recover no more than its actual
4 cost of service. It's also true, isn't it, that
5 ComEd will likely recover no less than its actual
6 cost of service, isn't it?

7 A Yeah, it is designed to be symmetrical.

8 Q I want to go through with you, if I could,
9 ways in which ComEd could possibly fail to recover
10 some of its future costs of service under Rate DSPP.

11 For example, one way actual costs may
12 not be recovered is if ComEd spends money on
13 something that is ultimately disallowed by the
14 Commission; is that true?

15 A Yes.

16 Q It's possible, isn't it, that when the
17 formula revenue requirement is translated into rates,
18 that ComEd future sales volumes may decline causing
19 the Company to fail to recover some of the approved
20 revenues; is that also true?

21 A Yes. In one year, yes, that's correct.

22 Q Alternatively, could the Company's sales

1 volumes increase above the levels used to set rates
2 causing ComEd to over earn in a particular
3 reconciliation year?

4 A I'm going to quibble with the word "earn."
5 It would recover more revenues than what it was
6 designed to recover because in that one year, the
7 sales volumes were higher than the billing
8 determinants that were used. I won't get into the
9 question of earnings.

10 Q We won't get into the question of earnings,
11 fine.

12 Is it correct that there is a return
13 on equity based earnings collar within the formula
14 rates that limits the amount of costs over or under
15 recovery that can be caused by fluctuations in sales
16 volumes?

17 A Yes.

18 Q Now, on Page 15 of your direct, Line 289,
19 you reference the performance improvement measures
20 and indicate if ComEd doesn't achieve the incremental
21 annual performance goals for a given period, ComEd
22 must reduce its return on equity.

1 Do you see that there?

2 A Yes.

3 Q So is this another place where ComEd may
4 earn less than its plan -- than is planned under
5 formula regulation?

6 A Yes.

7 Q Are there any other ways in which you can
8 think of that ComEd would fail to recover its actual
9 costs under formula ratemaking in the form being
10 proposed beyond ICC disallowances, sales volume
11 declines or performance failures?

12 A None come to mind.

13 Q Let's go back to your Exhibit 1.2, Page 5.
14 If you look at the sixth line from the top it says,
15 Rate DSPP specified that any differential will result
16 in a corresponding credit or charge with interest to
17 be included in the delivery service charges
18 applicable beginning January 1st of the following
19 year.

20 Do you see that?

21 A Yes.

22 Q And it's correct, isn't it, that this

1 provision compensates ComEd for the time value of
2 money if its expenses or rate base increase faster as
3 measured through the reconciliation process than was
4 contemplated in setting the initial rates?

5 A Yes, but it is symmetrical. It works the
6 other way. I didn't know if you were going to have a
7 follow-up to say, Does it also compensate the
8 customers if the rates were found to be set too high?

9 Q Right, but I'm focusing on --

10 A Yeah.

11 Q -- ComEd's failure to recover.

12 Okay. So given what we've talked
13 about here and any existing potential for under
14 recovery of actual expenses, if ComEd is able to
15 reconcile annual revenue -- its annual revenue
16 requirement to its actual costs every year, with
17 interest accrued on any under recovered costs, would
18 you agree that the Company will be charging its
19 customers cost base rates in every future year with
20 very little potential for under recovery of any cost
21 increases in future years as long as formula rate
22 making is in effect?

1 A Yeah. Again it's symmetrical. It is
2 designed to track costs as closely as possible and I
3 believe because of that, it's -- is a superior design
4 to the test years that were used in previous cases.

5 Q So with the annual revenue requirement
6 reconciliation process that we've talked about and
7 the minimal -- specifically identified instances
8 where ComEd would not recover its costs and including
9 recognition of interest on under or over recoveries,
10 would you agree that regulatory lag -- the concept as
11 we know it for the Company -- is virtually
12 eliminated?

13 MR. RIPPPIE: I object to the form of the
14 question. The witness did not state that the
15 exceptions were minimal.

16 BY MS. LUSSON:

17 Q With the --

18 JUDGE SAINSOT: Just rephrase.

19 MS. LUSSON: I'll rephrase the question.

20 BY MS. LUSSON:

21 Q With the annual revenue requirement
22 reconciliation process in place and the limited

1 opportunities for ComEd not to recover its costs and
2 the fact that ComEd receives interest on under or
3 over recoveries, would you agree that regulatory lag
4 for the Company is virtually eliminated with the
5 formula rate process?

6 A Regulatory lag is minimized.

7 Q And I have to ask under what condition
8 would you agree that it would be virtually
9 eliminated? What would be even better from ComEd's
10 perspective than that kind of an annual
11 reconciliation process of its actual costs?

12 A I wasn't prepared to create a superior
13 design here on the stand, but what I'm saying is is
14 it's not eliminated because you still have the
15 historical billing determinants. There is no true up
16 for -- if there are under recoveries of the revenue
17 requirement due to, say, you know, an exceptionally
18 mild year. That lag still exists, in fact, is -- it
19 would never be recovered. So to say it's perfectly
20 eliminated or whatever word you used, I don't
21 remember exactly, I can't say because there are other
22 things that are at risk to the Company given -- you

1 know, or with this current design.

2 Q But given the business that ComEd is in and
3 given the fact that ComEd does not have decoupling in
4 effect, that's always at risk, isn't it, the effect
5 of weather on revenues? That's always going to be a
6 factor?

7 A It -- always means into the future. I
8 mean, there are ways to remedy that.

9 Q I'm saying talking about --

10 A In the past?

11 Q -- factor as long as there is no decoupling
12 and as long as there are revenues recovered through
13 variable charges.

14 A Yes.

15 Q Can you turn to Page 5 of your rebuttal
16 testimony, Line 98. You state, The charges customers
17 pay are ultimately based on actual costs not on
18 projections or costs for a particular test year.

19 Do you see that?

20 A Yes.

21 Q Would it be fair to conclude that in this
22 new formula rate environment you described, every

1 year becomes like a test year to the extent we're
2 examining costs in a 12-month period with the caveat
3 that then rates are changing annually based upon
4 updated costs to service?

5 A I will not accept the term "test year"
6 applying to the process that we use in the formula
7 rate.

8 JUDGE SAINSOT: So is that a no, Dr. Hemphill?

9 THE WITNESS: It is.

10 BY MS. LUSSON:

11 Q Would you agree that to the extent that
12 formula rates examine a 12-month period, to that
13 extent it is like and to the extent that test years
14 also include 12 months of data, would you agree that
15 in that sentence they are similar?

16 A No.

17 Q I'm restricting my -- I understand you have
18 discrepancies with the notion of test year ratemaking
19 versus formula ratemaking, but I'm saying within the
20 context of the fact that formula rates examine a
21 12-month period and a test year, likewise, examines a
22 12-month period, absent pro forma plan adjustments,

1 absent the forecasts that are included in this
2 formula rate filing for plant, would you agree that
3 that period is identical?

4 A Test years use a 12-month period. The
5 formula process uses a 12-month period. In that way,
6 they are similar.

7 Q Thank you.

8 A They both use a 12-month period.
9 However --

10 Q You can do the however on redirect.

11 MS. LUSSON: I would ask that the witness be
12 instructed to --

13 JUDGE SAINOT: That's correct. You answered
14 the question before however, for the record.

15 BY MS. LUSSON:

16 Q And I think you've agreed that one purpose
17 of this proceeding is to allow the Commission to
18 evaluate ComEd's formula rate proposals and to modify
19 those proposals where necessary to ensure that just
20 and reasonable rates are produced.

21 Would you agree with that?

22 A Yes.

1 Q Now, at Line 102 on that same page, 5, you
2 state, Customers pay the reasonable and prudent costs
3 of the service they receive. No more, no less.

4 Do you see that?

5 A Yes.

6 Q Would you agree that after reconciliations
7 have occurred each year, ComEd's authorized revenue
8 requirement will be equal to its actual cost of
9 service subsequent only to regulatory accounting
10 adjustments or any prudence or performance adjustment
11 that may be imposed?

12 A Yeah, I wouldn't use the word "only"
13 because I believe that's pretty significant; but
14 other than the word "only," I would agree.

15 Q And I think with respect to the
16 reconciliation process that we referenced, would you
17 agree that that procedure -- that is the
18 reconciliation procedure -- tends to create revenue
19 levels equal to the reasonable and prudent actual
20 costs of service with interest on any over or under
21 recoveries?

22 MR. RIPPIE: It's been asked and answered now

1 at least twice.

2 JUDGE SAINOT: That's correct. You can move
3 on, Miss Lusson.

4 BY MS. LUSSON:

5 Q Turn to Page 6, if you would, of your
6 rebuttal.

7 A You said of the rebuttal?

8 Q Yes.

9 A Okay. I am there.

10 Q You advise that -- at Line 115 that the
11 ALJs and Comission should keep in mind that test year
12 rules have little or no remaining application in the
13 formula ratemaking world.

14 Do you see that?

15 A I do.

16 Q And that the formula rate is fully
17 reconciled to actual reasonable and prudently
18 incurred costs; is that correct?

19 A That's correct.

20 Q Would you agree that in this new regime,
21 it's very important that the rules for how costs are
22 assembled within the formula are important,

1 particularly in defining how to calculate the
2 reconciliation revenue requirement?

3 JUDGE SAINSOT: Was that a yes, Dr. Hemphill?

4 THE WITNESS: I haven't said anything yet. I'm
5 sorry.

6 JUDGE SAINSOT: Okay. Hard to tell. Go ahead.

7 THE WITNESS: I'll minimize the nodding.

8 I would agree with that.

9 BY MS. LUSSEN:

10 Q And, in fact, that's again what this
11 proceeding is about, wouldn't you agree?

12 A Yes.

13 Q At Line 149 on Page 8, you reference that
14 each year has its own calculated costs and charges
15 which, again, are then reconciled independently.

16 Do you see that?

17 A Yes.

18 Q By asking ComEd to approve Rate DSPP, as
19 you've proposed it, isn't ComEd asking that very
20 specific rules be defined for all of the input data
21 and computations logic to de- -- to derive an initial
22 and a reconciliation revenue requirement each year?

1 A If what you're referring to is the formula
2 itself, that's what we're asking to be approved, yes.

3 Q Now, turning to Line 161 through 164, that
4 sentence there, if you could read through that.

5 A Okay.

6 Q So you state that you object to certain
7 Staff and Intervenor adjustments because -- in whole
8 or in part because they propose to exclude real costs
9 of delivery service that would otherwise be included
10 in a formula rate on policy grounds.

11 My question is, when you -- that
12 phrase "on policy grounds," did you intend that to
13 modify the exclusion of real costs and not the phrase
14 "included in a formula rate"?

15 In other words, when you reference
16 policy grounds, you're referencing the part of the
17 sentence that talks about Staff and Intervenor
18 proposed adjustments to exclude costs.

19 A Yeah, what I'm referring to there are
20 adjustments that would be counter to what the spirit
21 is of -- or the intention is of the formula rate
22 process.

1 Q So the "on policy grounds" part of the
2 sentence should probably go after the word "service";
3 right? I'm just trying to make sure I understand
4 that sentence.

5 A I suppose the sentence would read properly
6 that way.

7 Q So I take it then that you believe that the
8 formula rate setting and reconciliation process
9 should focus on reflecting the Company's quote
10 unquote real costs; is that right?

11 A Yes, that's the intention.

12 Q Now, on Page 11 of your surrebuttal
13 testimony, you respond to the average rate base
14 proposals of Mr. Bridal, Mr. Brosch, Mr. Smith and
15 Mr. Gordan.

16 Do you see that?

17 A Yes.

18 Q Gorman, I'm sorry.

19 Now, as I understand your testimony,
20 your position is that only end of year rate base
21 figures fully reflects the use and useful investments
22 actually made for that year; is that right?

1 A Yes.

2 Q So if you indulge me for a moment, I'd like
3 to explore a hypothetical with you to explore that
4 conclusion or that opinion.

5 Can you assume for my hypothetical
6 that a utility providing electric delivery services
7 is calculating its reconciliation revenue requirement
8 and that there's no disagreement about any expenses
9 or the percentage rate of return that's required so
10 that the formula is all worked out and agreed upon by
11 every one in this particular reconciliation
12 proceeding that I'm creating, okay? Can you accept
13 that assumption?

14 A That's your assumption.

15 Q Okay. And to simplify the rate setting
16 process in my hypothetical, if you would assume that
17 annual expenses are constant every year at \$100 and
18 that the rate of return is 10 percent. Okay?

19 A Okay.

20 Q Now, the utility needs to earn a return on
21 its actual invested capital throughout the
22 reconciliation year. Would you agree?

1 A That would be ideal, yes.

2 Q So assume with me that rate base is \$500 at
3 the beginning of the reconciliation year and has
4 grown to \$1,000 at the end of the reconciliation
5 period. Okay?

6 A Yes.

7 MR. RIPPPIE: Your Honors, I am going to make a
8 scope objection. We tried to be very clear in his
9 testimony; that Dr. Hemphill was testifying about the
10 use of average period numbers to reflect the activity
11 during a period. The impact on revenue requirement
12 calculations is addressed by a different witness.
13 All this math is addressed by Miss Houtsma.
14 Dr. Hemphill is addressing a question of the fact
15 that only the end of year numbers reflect the
16 activity during the period in that policy issue. I
17 understand that Miss Lusson is entitled to ask
18 Dr. Hemphill whatever she's entitled to ask with
19 respect to testing that, but he does not go into the
20 revenue requirement calculations in detail, that is
21 done by a different witness.

22 JUDGE SAINSOT: Your response?

1 MS. LUSSON: My hypothetical is very basic
2 math. If I'm permitted to continue with my
3 hypothetical, I'm almost there with all the
4 assumptions, and this is not about calculating a
5 specific number, it's about the correctness of the
6 assumption that end of year plant balances is the
7 necessary component in this formula rate.

8 JUDGE SAINSOT: All right. Your objection is
9 overruled.

10 BY MS. LUSSON:

11 Q So again my hypothetical again assumes a
12 constant every year of \$100 worth of expenses,
13 10 percent return and -- on capital and \$500 in plant
14 investment at the beginning of the reconciliation
15 year. Okay. Are you with me so far?

16 A I may be it depends on your question.

17 Q Okay. We'll get there. Hopefully. At the
18 end of the year, that plant investment has grown to
19 \$1,000. That's the latest assumption under -- are
20 you understanding that?

21 A Okay. So it starts at \$500 and then it
22 grows to \$1,000 at the end of the year?

1 Q Correct.

2 JUDGE SAINSOT: I don't understand the word

3 "grow." How does it happen that it goes from

4 point --

5 MS. LUSSEN: The Company invests in more plant

6 so that its total plant investment is valued at

7 \$1,000 at the end of the year.

8 JUDGE SAINSOT: So it spent that much money?

9 MS. LUSSEN: Correct. And depreciation works

10 to create the \$1,000 figure.

11 JUDGE SAINSOT: Okay.

12 MS. LUSSEN: So it's essentially doubled from

13 the beginning of the year to the end of the year.

14 MR. RIPPKE: Net of depreciation?

15 MS. LUSSEN: Net of depreciation.

16 BY MS. LUSSEN:

17 Q If we calculate again using my very simple

18 assumptions -- if we calculate the revenue

19 requirement as of the beginning of the year using the

20 \$100 of expense, plus a 10 percent return on that

21 \$500 plant investment, would you agree that the

22 revenue requirement, as of the beginning of the year,

1 would be \$150? So it's a \$100 of expense, 10 percent
2 of the \$500 plant investment equaling \$50, 100 plus
3 50 equals --

4 MR. RIPPIE: And this is why I had my scope
5 objection because, in fact, there are issues about
6 depreciation, which this witness does not testify to;
7 there are issues of CWIP and when you start putting
8 investments into rate base during the year, all of
9 those things are addressed by a different witness.
10 If it is absolutely clear that this witness is only
11 answering under the highly abstract assumptions then
12 he can answer to the extent he's answering, but this
13 is illustrative of why Dr. Hemphill is not the right
14 witness to be asked these questions.

15 MS. LUSSON: Well, I would just respond by
16 saying if Dr. Hemphill is not the right witness to be
17 asking these kinds of questions, then perhaps
18 Dr. Hemphill is not the right witness to be
19 testifying as to what the appropriate rate base value
20 should be in the formula rate filing. These are very
21 simple assumptions and the point is in -- a response
22 to Mr. Hemphill's opinion that using end of year

1 plant rate base reflects ComEd's actual costs. My
2 questions go to what are the actual costs going on
3 through the year if you have plant value that is at
4 one level in the beginning of year and plant value of
5 a completely different level at the end of the year.

6 MR. RIPPIE: I'm not arguing the merits of your
7 point. There will be plenty of opportunities to
8 discuss the merits of the point --

9 JUDGE SAINSOT: Can we backtrack a little bit?
10 Mr. Rippie proposed something that I think might
11 clear things up and that is to exclude CWIP and all
12 those things and just make it very simple for the
13 record that this is all it includes. Maybe you want
14 to restate it, Mr. Rippie, because I don't even
15 remember, depreciation, CWIP.

16 MR. RIPPIE: I was renewing my objection
17 because, in fact, the highly simplified hypothetical
18 is not representative, but I understand that your
19 Honors may overrule that. I simply ask that if you
20 do, it be very clear that the witness is answering
21 only under the parameters identified specifically by
22 Miss Lusson.

1 MS. LUSSON: And that was the absolute purpose
2 of my hypothetical which was to create simple numbers
3 so we can get at the effect of a --

4 JUDGE SAINOT: Okay. You can continue as long
5 as we understand that things like depreciation and
6 all the complications that go into -- there's nothing
7 outside your own addition to your question?

8 MS. LUSSON: That's correct.

9 BY MS. LUSSON:

10 Q So I think we were at the point where you
11 were calculating. So assuming the revenue
12 requirement calculation is expenses, plus rate of
13 return times plant investment and you have \$100 worth
14 of expenses, a 10 percent rate of return on \$500
15 worth of plant, would you agree then that the revenue
16 requirement, putting aside everything else, would be
17 \$150?

18 A No, I can't. It's not how ratemaking takes
19 place. You don't --

20 Q But if we're looking at the Company's cost
21 of capital on that plant --

22 MR. RIPPKE: I just ask that he be allowed to

1 finish his answer.

2 JUDGE SAINSOT: You can continue, Dr. Hemphill.

3 THE WITNESS: The rates aren't set periodically
4 through the year. These are rates that are being set
5 or reconciled at a point in time after which all of
6 this expenditure has been made.

7 Again, I'm -- I think you established
8 early on -- I'm not an accounting expert, but I do
9 understand that if someone were to ask me -- let's
10 say I bought a house -- if I could use my own
11 example.

12 BY MS. LUSSON:

13 Q Sure.

14 A That I bought a house over a year period of
15 time. I made a deal that I would pay for it each
16 quarter, so the house is a \$200,000 house and I agree
17 that over four quarters I'll pay \$50,000 each
18 quarter. At the end of the year, how much house did
19 I buy? You don't take the 50,000 plus 50,000 plus
20 50,000 plus 50,000 and divide by 4. You don't take
21 those increments and it results in something less
22 than what the total amount was put into in terms of

1 investment.

2 The house was \$200,000 and so in
3 ratemaking such as this where you're talking about a
4 reconciliation on something that takes place after
5 the fact, after all of the investments had been made,
6 the proper accounting of that, to the extent that I
7 can state that from a policy perspective, it's end of
8 year. It's not some average over a period of time.

9 Q But if we're looking at -- what are the
10 costs that the Company incurred at the beginning of
11 the year based on its investment in plant, the
12 capital costs that the Company incurred, would you
13 agree that they're different in the beginning of the
14 year versus the end of the year?

15 A Yes.

16 JUDGE SAINSOT: How much more do you have,
17 Miss Lusson?

18 MS. LUSSON: About 15 minutes.

19 JUDGE SAINSOT: Why don't we take a 10-minute
20 break real quick.

21 (Break taken.)

22 JUDGE SAINSOT: Why don't we break now then and

1 we'll continue with you, Miss Lusson and we'll come
2 back at 1:30 in the main room.

3 (Whereupon, a luncheon
4 recess was taken to resume
5 at 1:30 p.m.)

6 (Change of reporters.)

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1 AFTERNOON SESSION

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3 JUDGE SAINSON: We are back on the record in
4 Docket 11-0721 and Ms. Lusson is cross-examining
5 Dr. Hemphill.

6 MS. LUSSON: Thank you.

7 CONTINUED CROSS-EXAMINATION

8 BY

9 MS. LUSSON:

10 Q Mr. Hemphill, let's go back to the analogy
11 that you created after I presented you with an
12 analogy.

13 I recall in the analogy, you talked
14 about the purchase of a \$200,000 house and that you
15 agreed to, I think you said, four equal payments over
16 the year of \$50,000 each; is that your analogy?

17 A Yes.

18 Q Now, under your analogy, you're assuming
19 you took possession of that house on January 1st,
20 aren't you?

21 A Yes.

22 Q Now, would you agree that ratepayers should

1 pay rates that provide a return on plant that
2 reflects what was used to provide service in 2010?

3 MR. RIPPPIE: Are we still operating in this
4 world without CWP and without AFUDC?

5 MS. LUSSON: I left the analogy altogether.

6 MR. RIPPPIE: We are now back completely in the
7 real world.

8 MS. LUSSON: We're in the real world.

9 THE COURT: Well, we're not in the real world
10 completely because the house would have been
11 devalued significantly.

12 (Laughter.)

13 You can continue, Doctor.

14 THE WITNESS: Yes.

15 BY MS. LUSSON:

16 Q Now, at Lines 242 through 243 on Page 12 of
17 your surrebuttal testimony, you state that:

18 "Only a end-of-year rate base
19 figure fully reflects the use and useful
20 investments actually made for that year."

21 Is that your testimony?

22 A Yes.

1 Q So would you agree that use and useful
2 investments made during the last three months of the
3 year, for example, were not in service for the entire
4 year?

5 A In your example, you could assume that,
6 yeah.

7 Q For example, a plant that went into service
8 in December of 2010 would, not by definition, be used
9 in providing service in January of 2010; would you
10 agree?

11 A Yes.

12 Q Page 7 of your Exhibit 11.0, which I think
13 is your rebuttal testimony, you reference account
14 balances beginning at Lines 146 to 148.

15 You say:

16 "ComEd's operating income
17 is derived from the comp balances in
18 the FERC form 1, plus estimated 2011
19 investment, accumulated depreciation and
20 appreciation expense, and that these
21 balances, these account balances, are
22 cumulative, not average."

1 Do you see that?

2 A Yes.

3 Q Would you agree that when ComEd derives its
4 operating expenses for formula ratemaking from
5 "account balances" in the FERC Form 1, these are
6 expense amounts that had been both recorded and
7 accumulated throughout the year at an average rate of
8 spending?

9 A I'm not trying to be difficult, but I'm not
10 sure I understand the question.

11 Q Well, for example, for wages, unless the
12 line at FERC Form 1 account for wages as of the end
13 of the year, all else being equal, the amount that
14 ComEd registers in the FERC Form 1 for wages would
15 reflect what happened on average during the year,
16 would you agree, in that expense amount?

17 A No.

18 Q So, in your opinion, that none of the
19 expense amounts reflect an average rate of spending?
20 It's all cumulative? It's all as of December 2010?

21 A It's the total for that year.

22 Q It's the total?

1 A Yes.

2 Q Okay. So to the extent it doesn't reflect
3 what occurred in December of 2012; is that right?

4 A That's correct, it's --

5 Q So to the extent -- I'm sorry.

6 A It's total expenditure for that year.

7 Q Okay. So in that regard, the expense
8 amounts are recorded for each month of the year;
9 would you agree?

10 A Yes, there is accounting records that do
11 that.

12 Q And that is true with staffing levels;
13 would you agree?

14 A Yeah, there are -- I couldn't say if it's
15 every month, but there are periodic accounting of
16 that over the year.

17 Q It's also true of material prices; in other
18 words, it doesn't reflect what the material prices of
19 just that December of 2010, does it?

20 A I'm not an accountant.

21 Q Okay.

22 A I can tell you it's a cumulative level and

1 it's recorded in FERC Form 1.

2 Q Let's go to your surrebuttal testimony,
3 Line 251. There you reference, total plant as of the
4 end of that year.

5 Do you see that?

6 A Yes.

7 Q And you reference capturing the activity
8 for the year. What do you mean by "activity for the
9 year"?

10 A The investments that were made during the
11 year.

12 Q Would you agree that the only activity that
13 is associated with plant and service accounts in any
14 given year would be for construction projects that
15 represent either additions or retirements to plant
16 and service?

17 A Yes.

18 Q Do you dispute that the total plant as of
19 the end of the year is actually an accumulation of
20 investment made, not only representing activity for
21 the year, but also of the plant investments and
22 retirements made in all prior years?

1 A I don't dispute that.

2 Q So then at Line 254 there, when you
3 reference an examination of what the plant balances
4 were at the beginning of the year, you're stating
5 that it doesn't reflect -- strike that.

6 Back at 254, you reference in your
7 criticism of using an average rate base as
8 recommended by Mr. Brosch, Mr. Gorman and staff
9 witness. You indicate, in your view, that it
10 incorporates a beginning balance, and that means that
11 the beginning balance represents none of the activity
12 of the year.

13 Do you -- is it your belief that plant
14 and service that is included in rate base should be
15 based solely upon activity during the year?

16 A In terms of considering the investment
17 that's made in a given calendar year, it should be
18 all of the activity during that year.

19 Q Would you agree that, at least for purposes
20 of 2010, that impacts to plant and service amounts,
21 that is the amount of new capital being invested by
22 the utility, is growing gradually throughout the

1 year?

2 A Yes.

3 Q It's not your testimony, is it,
4 Mr. Hemphill, that ComEd routinely invests 100 of its
5 annual new capital investment in plant and service in
6 early January of each year, and then makes no new
7 investments through the remainder of the year, is it?

8 A No.

9 Q And then let's go to Page 13 of your
10 surrebuttal testimony and talk about your reference
11 to the Christmas Day Bears/Packers game.

12 A Okay.

13 Q You state people -- you can ask, How many
14 points did the Bears score for their fourth quarter
15 efforts?

16 Isn't the more relevant question, what
17 happened during the game?

18 A No. The relevant question is what happened
19 at the end of the game, what the final score was.

20 Q So when people walk into that game and they
21 being charged a ticket to watch that game, is it your
22 belief that that price attempts to reflect of putting

1 on the entire game or just the fourth quarter?

2 A It's for the entire game, and the purpose
3 of the game is the final score.

4 Q Would you agree that what happens in the
5 first, second and third quarters ultimately
6 translates into a final score in the fourth quarter?

7 A Yes, but not if they're averaged.

8 Q I did have another sports analogy involving
9 Boston Red Sox, but I will skip it for the purposes
10 of being short.

11 JUDGE SAINOT: It's probably just as well. I
12 would probably have to have Judge Kimbrel to explain
13 it to me.

14 JUDGE KIMBREL: I'm from Boston, I would enjoy
15 it.

16 MS. LUSSON: I have a few questions about the
17 company's charitable contributions.

18 BY MS. LUSSON:

19 Q Is the objective of ComEd's charitable
20 contributions to provide donations to appropriate
21 charities or is it to create positive public
22 relations or goodwill for Commonwealth Edison?

1 A What was the first choice?

2 Q Providing donations to appropriate
3 charities?

4 A Donations to appropriate charities is the
5 objective.

6 Q And if ratepayers are required to fund
7 these contributions would ComEd object to making the
8 contributions in the name of ComEd ratepayers when it
9 sends letters to each of these entities describing
10 the donation?

11 A I hadn't thought about that.

12 Q Or when it, for example, advertises on WTTW
13 on behalf of ComEd, "this show is sponsored by
14 ComEd," would ComEd object to saying, "This show is
15 being sponsored by ComEd ratepayers"?

16 A I think you know, Ms. Lusson, that's above
17 my pay scale, and I hadn't thought about it.

18 MS. LUSSON: Thank you, Mr. Hemphill. No
19 further questions.

20 MR. COFFMAN: Your Honor, I just have a few
21 follow-up questions.
22

1 EXAMINATION

2 BY

3 MR. COFFMAN:

4 Q Good afternoon, Mr. Hemphill.

5 A Good afternoon.

6 Q I'm John COFFMAN, representing AARP today.

7 Let me just ask a question along the
8 lines of Ms. Lusson's last charitable contributions
9 issue.

10 I know you hadn't thought about ways
11 in which you characterize this contribution, which is
12 a mandatorily funded by the ratepayers.

13 Has there ever been a discussion
14 within Commonwealth Edison about allowing the
15 ratepayers the option to opt out of that portion of
16 the rate that's designated to charities that,
17 perhaps, ratepayers would not want to fund?

18 A Not that I'm aware of.

19 Q Are you familiar with what ways
20 Commonwealth Edison does inform its ratepayers what
21 charities are being funded through the rates that
22 they pay? Is there any mailing or information

1 provided to ratepayers that lists the charities?

2 A Yeah, I'm not aware of whether there is or
3 there isn't.

4 Q I'm going to direct you now to your
5 surrebuttal testimony on Page 8, Lines 160 and 168.

6 Staff asked you a question about your
7 statement there expressing a concern about increased
8 uncertainty, volatility or the cost of larger
9 reconciliation adjustments.

10 And I believe your answer to Staff's
11 question about whether it is more likely that there
12 will be reconciliation adjustments that increases or
13 decreases, and I believe your answer was you were not
14 sure whether it would be more likely to go up or
15 down; is that correct?

16 MR. RIPPIE: He can ask the question that he
17 wants to ask. Let's not recharacterize what the
18 witness previously answered. I think his answer will
19 stand, and, in fact, I don't think that's an accurate
20 characterization.

21 THE COURT: I'm not sure what you're looking,
22 Mr. COFFMAN. So it's hard for me to --

1 MR. COFFMAN: I will ask it myself with the
2 risk of being repetitious.

3 BY MR. COFFMAN:

4 Q But do you have -- do you expect that as
5 this formula rate case process goes forward that the
6 reconciliations are more likely to be increases or
7 decreases based on the projections?

8 A No, I would expect the risk or the
9 probability to be symmetrical on each side.

10 Q And provided that the Illinois Commerce
11 Commission is relatively consistent in its regulatory
12 determinations on its projections, as well as its
13 regulatory determinations on the reconciliation,
14 wouldn't that tend to minimize the volatility or
15 uncertainty?

16 A Yes, I would agree.

17 Q Would you agree with me that the one
18 purpose of the law that authorizes today's proceeding
19 is to more closely align the utility's cost of
20 service during the year with the rates that its
21 customers pay during the year?

22 A That's the intention, yes.

1 Q I want to ask you a couple of questions now
2 about the issue of end-of-year rate base versus
3 average-rate base.

4 And I would like for you, for the
5 purposes of these questions, assume a couple of
6 hypotheticals. And for the purpose of the
7 hypothetical, I'm assuming all other factors being
8 the same between these two different scenarios. I'm
9 trying to be as simple as I can and not involve any
10 math.

11 In Hypothetical 1, the utility makes a
12 lumpy large investment in rate base and assets put
13 into rate base in February, say February of 2013; and
14 the only difference with Hypothetical 2 is that very
15 same large lumpy asset is put into the rate base in
16 December of 2013.

17 Now, in each of these scenarios, if
18 under your proposed end-of-year plant balance
19 approach, would the result in rate increase be the
20 same in both hypotheticals?

21 MR. RIPPIE: I'm going to make the same
22 objection, then ask the same clarification that I

1 asked of Ms. Lusson.

2 Is this a simplified world in which
3 there is no AFUDC, no CWP, no considerations like
4 that; where the only entry into rates is when an
5 asset is finally put into service?

6 MR. COFFMAN: I'm assuming all other regulatory
7 considerations are the same.

8 MR. RIPPIE: Yeah, but that wasn't my question.

9 My question is: Are we assuming the
10 simplified hypothetical with just the features you
11 gave or are we assuming a world where there is AFUDC,
12 CWP, all the other things, in which case, I will tell
13 you this is way beyond this witness' testimony. You
14 should put that to Ms. Houtsma.

15 THE COURT: Let him answer the question.

16 We need to know, is this where you're
17 putting an AFUDC and CWP and depreciation and all
18 this math, or is this just a pure hypothetical that
19 excludes all this other stuff?

20 MR. COFFMAN: I'm assuming that all those
21 factors are the same in both situations.

22 THE COURT: So they're excluded then, because

1 they don't matter, right? Now, I'm a lawyer, so
2 correct me on my math, please.

3 MR. COFFMAN: If that's a consideration, he can
4 answer and Mr. Rippie can follow up in
5 cross-examination.

6 I'm asking simply asking if the only
7 thing that changes in the year is the timing of this
8 large asset during the year, would the rate increase
9 be the same or would it be higher or lower under one
10 of those scenarios.

11 THE COURT: So for your purposes, these would
12 be excluded, because your only difference is you're
13 one month -- or 13 months off, depending on the
14 January or December.

15 MR. COFFMAN: Within the same annual period
16 that we are looking at.

17 MR. RIPPIE: With all due respect, that doesn't
18 answer my question or the objection.

19 Saying they're the same doesn't answer
20 the question. They're not the same, if it's not the
21 same month.

22 So I'm just asking: Are they in or

1 are they out? If you tell the witness, then he will
2 tell you whether he can answer the question or not.

3 THE COURT: You know what, Mr. Rippie, he
4 answered the question. He said "everything else
5 being equal," so that assumes that AFUDC, CWP, all
6 the math stuff depreciation is out the window, so he
7 can proceed.

8 THE WITNESS: I would say it would be the same.

9 By MR. COFFMAN:

10 Q And that would be the same regardless of
11 how long the ratepayers benefited from that asset
12 being dedicated to service during that year?

13 A Now, you're going from accounting to
14 economics when you talk about benefiting, but I won't
15 be difficult, I'll say yes.

16 MR. COFFMAN: That's all I have. Thank you.

17 JUDGE SAINSOT: Who's next?

18 CROSS EXAMINATION

19 BY

20 MR. REDDICK:

21 Q Good afternoon, Mr. Hemphill. Conrad
22 Reddick for the IIEC.

1 A Good afternoon.

2 Q All of my questions are prompted by your
3 surrebuttal testimony.

4 I believe earlier you described the
5 proposed formula rate process as a two-part process,
6 one being the rates based on projected costs and the
7 other part being the reconciliation charge.

8 Did I recall that accurately?

9 A Yes, it's a simplified way to describe it,
10 yes.

11 Q In your testimony, you make the statement
12 that a projected rate base would never be the basis
13 of a final rate base or a final charge.

14 In that sentence, does the phrase
15 "final charge" refer to the reconciliation adjustment
16 or to the combined effect of the projected cost rate
17 and the reconciliation adjustment?

18 A Could you point where I use that
19 distinction.

20 Q Page 10, Line 202

21 A Did you say Line 202?

22 Q No, I misspoke. Line 181 on Page 9.

1 A That refers to after the reconciliation.

2 Q So you're referring to the combined effect
3 or simply the reconciliation charge?

4 A I'm not sure what you mean by "combined."

5 Q Your sentence is that:
6 "Projected rate base will never
7 be the basis of a final rate base
8 or charge?"
9 What do you mean by "final charge"?

10 A What I'm referring to is after the
11 reconciliation.

12 Q Are you referring to the reconciliation
13 charge or to the combined effect of the projected
14 cost rate and the reconciliation charge?

15 A It's the word "combined" that's throwing
16 me. What I'm referring to is the rate that results
17 after the reconciliation.

18 Q The reconciliation charge?

19 A The rate that results after the
20 reconciliation is the rate. The charge from the
21 reconciliation is a process inside the formula.

22 Q What do you call the rate base on projected

1 costs?

2 A It's the rate that is in effect after that
3 proceeding is over.

4 Q Do you have a name for it?

5 A I do not.

6 Q And your statement about a final rate does
7 not include any effect of that rate based on
8 projected costs for which we have no name?

9 A Yeah, we may be getting thrown with the
10 word "combined."

11 But maybe if I could just go back to
12 describing the process, then we'll see where we are
13 getting mixed up here.

14 Q I think I understand the process. I'm just
15 trying to find out what you're referring to when you
16 say "final rate"?

17 A "Combined" is your word, not mine. That's
18 why it's throwing me.

19 A reconciliation is a rate that's in
20 effect based on projected capital and other things
21 related to the capital, which we won't get into.

22 After the fact, taking a look at what

1 actually took place during that same 12 months, there
2 is a reconciliation to adjust for the difference
3 between what was projected and what actually
4 occurred. And that is part of the next rate that
5 will go into effect.

6 Q What is the final rate? Your phrase.

7 A The final rate is the rate that -- the
8 final rate that includes -- and let's say, we are
9 doing this in '13. It would be a May 1, '13 filing,
10 2013 filing. That wouldn't go into effect until the
11 end of December '13, that includes a reconciliation
12 of the projected capital that occurs in 2012.

13 So to the extent, that we are talking
14 about what happens in terms of investments in 2012,
15 that would be the final adjustment for that
16 investment in 2012.

17 Q Let me see if I can rephrase it using your
18 word: If I understood your answer, the final rate
19 includes both the rate based on projected cost and
20 the reconciliation charge that follows later?

21 A It includes an adjustment for what actually
22 occurred in '12 adjusting the projection that was

1 made for '12 in the previous proceeding.

2 If you will allow me to talk?

3 Q Let me try it this way first: If the rate
4 based on projected cost is 10 cents per kilowatt, and
5 the following year, a reconciliation adjustment of
6 one-half cent per kilowatt hour is imposed, what is
7 the final rate?

8 A In this you're just talking about the
9 adjustment of the capital? We are not including O&M
10 anything like that.

11 Q I'm talking about rates.

12 A So you're talking about O&M.

13 Q I'm talking about a rate paid by customers,
14 a charge per kilowatt hour?

15 A This is kind of tedious, because you can't
16 just take that out separately and say that's the
17 rate. I mean, there are several things that take
18 place during this process.

19 So if I could elaborate just a little
20 bit, and then we'll see where we are lacking clarity.

21 Q I'm only talking about what customers pay.

22 Based on the projected cost rate that

1 goes into effect based on the spring filing at the
2 beginning of the year, ten cents per kilowatt hour,
3 hypothetically, is that projected cost rate, the
4 following year there is a reconciliation charge based
5 on actual costs for that rate period of one-half cent
6 per kilowatt hour, annual one-half cent, what is the
7 final rate you were referring to in this sentence?

8 A Now, I believe I can answer it this way:

9 It's the ten cents, plus you said it's
10 half a cent adjustment as part of the reconciliation,
11 plus or minus what the new O&M numbers are for the
12 previous year.

13 Q And you're answering that way, I believe,
14 because the reconciliation adjustment is included in
15 the new projected-cost rate and not stated
16 separately?

17 A That's correct.

18 Q Okay.

19 A That was --

20 Q You also refer to the rate cost on
21 projected cost for rate period as an approximation
22 depending availability of actual costs and the

1 determination of rates based on those actual costs.

2 Did I summarize your testimony
3 accurately there?

4 A I'll accept that.

5 Q Okay. Do you anticipate that the
6 reconciliation adjustment charge, that second
7 component that is included in the determination of a
8 new projected rate, that the adjustment charge based
9 on the actual costs would be larger or smaller than
10 that portion of the final rate that's based on
11 projected costs?

12 A I can't tell.

13 Q Do you think it's realistic that an
14 adjustment charge would be larger than the charge
15 based on the original estimate of all costs?

16 A That the adjustment would be larger than
17 the previous years' projection, is that what you're
18 saying.

19 Q Yes, sir.

20 A That's realistic, yeah.

21 Q I'm sorry?

22 A It's realistic that it would be larger.

1 Q That the adjustment would be larger.

2 And in discussing rate base

3 projections, you state that a goal of projection

4 should be to "minimize the reconciliation swings."

5 Do you agree that proper

6 implementation of the formula rate process should

7 produce reconciliation adjustments for ComEd that are

8 significantly smaller than the rate based on

9 projected costs?

10 A If you're asking if the adjustment should

11 be significantly smaller, the answer is yes.

12 Q I'm sorry. I didn't hear you.

13 A If you're asking if the adjustment should

14 be significantly smaller than the projected rate, I

15 would say yes.

16 Q Okay. Do you also agree that a rate based

17 on projected costs that does not cause the large

18 swings in reconciliation charges is more likely to

19 meet the regulatory review standards that the

20 Commission uses in general rate cases?

21 A And what are those regulatory review

22 standards you're referring to?

1 Q The same evidentiary standards including,
2 , but not limited to those including the prudence and
3 reasonableness of costs incurred by the utility?

4 MR. RIPPIE: Hang on. I have a problem with
5 that question for a principally the reason that it's
6 necessarily incomplete, "including, but not limited
7 to" implies Mr. Reddick means something he's not
8 telling the witness.

9 So if the witness knows what those
10 standards are, the witness can answer.

11 JUDGE SAINSOT: Mr. Reddick, are you quoting
12 from the statute?

13 MR. REDDICK: Yes, I am.

14 JUDGE SAINSOT: You need to rephrase that
15 question.

16 BY MR. REDDICK:

17 Q Mr. Hemphill, how long have you been
18 involved in regulatory proceedings?

19 A 35 years.

20 Q And over that period, have you become
21 acquainted with the standards regulatory bodies use
22 in reviewing rate proposals?

1 A I am.

2 Q And you're familiar with concepts like
3 "just" and "reasonable" and "prudence"?

4 A I am.

5 Q And let me rephrase my question then, would
6 a rate based on projected costs which does not cause
7 large swings in reconciliation charges, more likely
8 to meet the standards of just and reasonableness that
9 Commission's use in rate cases?

10 A I would say the just and reasonable, I
11 cannot say yes, because large swings might be
12 unavoidable at times, but I can't say unqualified,
13 yes.

14 I will help out here, rate stability
15 is something Commissions have forever tried to
16 accomplish.

17 So you're minimizing the
18 reconciliation that takes place from on a
19 year-to-year basis will minimize the instability of
20 rates.

21 Q And that's a good thing?

22 A Yes.

1 Q That was a "yes"? I'm sorry. I just
2 didn't hear the word.

3 A Yes.

4 JUDGE SAINSOT: Mr. Reddick, it might help if
5 you speak up, too.

6 MR. REDDICK: Does that help?

7 JUDGE SAINSOT: Just for the record,
8 Mr. Reddick, you're a little soft spoken.

9 MR. REDDICK: I'll try to use my outside voice.

10 BY MR. REDDICK:

11 Q Does ComEd's proposed formula rate tariff
12 and process allow the Commission to approve a rate
13 base or a rate that does not meet the standards of
14 prudent, just and reasonableness because of the later
15 reconciliation?

16 A No.

17 Q Do you have any idea how much of ComEd's
18 rate base turns over each year?

19 A No, I would have to look or ask experts
20 that studied this on a regular basis.

21 Q Any idea who that might be of the witnesses
22 scheduled?

1 A Yeah, there is one coming up, Martin Fruehe
2 or Ms. Houtsma.

3 Q Thank you.

4 Did you -- I thought I heard this,
5 but let me check so I don't misstate your testimony.

6 Did you agree earlier that ComEd is
7 entitled to earn only on the investment used to
8 provide service?

9 A I would agree with that, yes.

10 Q Earlier you reiterated your position that
11 the end-of-year total plant figure captures the
12 activity for that rate period.

13 Did I remember that correctly?

14 A I would agree with that statement.

15 Q Is it ComEd's proposal that the rate based
16 used to set formula rates should be a reported
17 investment activity during the rate period instead of
18 the amount of investment used to provide service
19 during the rate period?

20 A It is the amount of investment used to
21 provide service during the rate case.

22 Q Let's try one more hypothetical, and I have

1 four numbers, so this should be very simple.

2 Assume that a person invests \$100 per
3 month in a bank savings account, and that she is
4 entitled to earn 2 percent return on her investment.

5 Over a 12-month period, she will have
6 deposited \$1,200. Does the bank determine how much
7 she is entitled to in interest by paying 2 percent on
8 the \$1,200?

9 A It would, if the recovery was happening
10 months after. In this case, if the payment was being
11 made for that investment many months after the actual
12 investment was made or the deposits were made.

13 Q And in my hypothetical, let me ask what the
14 payment would be if it were made first day after the
15 end of the year?

16 A You're saying if the bank would have paid
17 this person the day after January 1st? Is that what
18 you're --

19 Q Yes.

20 A It would probably be the weighted sum of
21 the return on the investments or the deposits during
22 the year.

1 Q Can I direct you to Page 6, Line 121 of
2 your surrebuttal testimony.

3 You, beginning the sentence beginning
4 "customers pay" you say "customers pay for and
5 utilities recover those costs" -- referring to the
6 costs you described in your previous sentence -- "no
7 more and no less."

8 In that sentence, is what customers
9 pay the same as what ComEd collects?

10 A Yes.

11 Q So what customers pay equals ComEd's
12 revenues?

13 A Yes, I hope so.

14 Q Okay. Is your assertion that customers pay
15 no more and no less than ComEd's costs based on the
16 reconciliation process?

17 A It's based on the entire process, yes,
18 which includes reconciliation.

19 JUDGE SAINSOT: Hold on just a second, there is
20 something going on with Springfield. Can somebody on
21 staff check that out.

22 MICROPHONE: This is Springfield. We just lost

1 video, but we still have audio so we can proceed for
2 now.

3 JUDGE SAINSOT: Thank you, Springfield.

4 You can proceed, Mr. Reddick.

5 BY MR. REDDICK:

6 Q I believe we stopped with me asking you
7 whether you responded the way you did because of the
8 reconciliation process.

9 My recollection is that you answered
10 the entire process, which suggests to me that there
11 is something more than simply the reconciliation.

12 Can you tell me what the things
13 besides the reconciliation adjustment.

14 A May 1st of each year, the previous year's
15 O&M numbers are filed, along with the reconciliation
16 for the previous year's capital plus projection for
17 the current year's capital. That's the process.

18 Q And that's the process that leads you to
19 say customers pay for utilities to recover those
20 costs, no more and no less?

21 A Yes.

22 Q Mr. Hemphill, is it true that the

1 reconciliation rate adjustment does not consider
2 ComEd's actual revenues?

3 A That's correct.

4 Q So what customers actually pay is not a
5 factor in the rate reconciliation that's conducted
6 annually?

7 A That's correct.

8 MR. REDDICK: Your Honor, rather than plow
9 through that, I think I would rather introduce some
10 data request responses from ComEd that explain this
11 entire process and save us a half-hour.

12 I have marked it as IIEC
13 Cross-Exhibit, if that's acceptable.

14 JUDGE SAINSOT: Okay. Are you just crossing
15 him with this or are we admitting this into evidence?

16 MR. REDDICK: Just admitting. I will skip the
17 questions.

18 JUDGE SAINSOT: Mr. Rippie?

19 MR. RIPPIE: I haven't seen them yet, but I
20 suspect we are going to be okay.

21 MR. REDDICK: Descriptively, they're three IIEC
22 data requests and a staff data request that was

1 referred to in the response to IIEC's.

2 MR. RIPPPIE: Your Honor, my only concern is
3 some of these data requests are not directed to
4 Mr. Hemphill and were not answered by him.

5 So, Mr. Reddick, if you will accept
6 the caveat that to the extent necessary -- we just
7 don't want to put ourselves in a position that
8 because you choose to admit this through this
9 person's testimony that we lost the right to do
10 redirect on them, when they actually belong to
11 Mr. Fruehe and Mrs. Houtsma, so if we can avoid that
12 problem.

13 MR. REDDICK: That's not a problem with me.

14 MR. REDDICK: So to the extent that redirect is
15 necessary with those witnesses, I need to do that
16 with these witnesses, then we have no objection.

17 JUDGE SAINSOT: Anyone else? You're moving for
18 its admission, right?

19 MR. REDDICK: I will move for IIEC
20 Cross-Exhibit 1, which is a four-page exhibit
21 consisting of Commonwealth Edison's responses to
22 IIEC Data Request 6.09, IIEC Data Request 7.05 and

1 Staff Data Request that's designated TEE 1.02.

2 JUDGE SAINSOT: Any objection?

3 I have a question, how do you know who
4 answered these things?

5 MR. RIPPKE: Staff has requested, and we
6 provided, a list to Staff that indicated which
7 witness is responsible for each. Not all the other
8 parties requested that, and the list wasn't all on
9 there. There are also some DRs that because they're
10 in the nature in contention of data requests were
11 answered by, essentially, no witness, they were
12 answered by a -- if you ask, What's ComEd's
13 contention, that may very well be answered by the
14 legal team.

15 JUDGE SAINSOT: Well, there is nothing wrong
16 with a lawyer answering it, no.

17 MS. LUSON: If you could supply that.

18 JUDGE SAINSOT: That being noted, your motion
19 is granted.

20 MR. REDDICK: Thank you.

21

22

1 (Whereupon, IIEC Cross-Exhibit
2 No. 1 was admitted into
3 evidence.)

4 BY MR. REDDICK:

5 Q In connection with its proposed formula
6 rates, ComEd has made certain investment commitments
7 as required under the new statute; is that correct?

8 A That's correct.

9 Q And during this period of implementing the
10 investment commitments that ComEd has made, can one
11 reasonably expect that ComEd's investment will be
12 increasing year over year?

13 A Yes.

14 Q And under those circumstances, can we
15 reasonably expect that during the period of these
16 investments, the change of investment plant additions
17 will exceed the change in the plant reserve?

18 A Yes, you can assume that.

19 Q I would like to ask a few high-level, very
20 high-level questions about the structure of the
21 tariff.

22 Could one accurately describe the

1 tariff as being composed of three major components,
2 the formula rate schedules, the associated
3 appendices, and the work papers?

4 A Yeah, I will accept that.

5 Q And the formula rate schedules are a part
6 of the tariff?

7 A Yes.

8 Q Are the appendices a part of the tariff?

9 A I would have to look to see if they
10 actually are.

11 Q Which one?

12 A Yes.

13 Q The appendices are part of the tariff?

14 A Yes.

15 Q Are the work papers part of the tariff?

16 A I don't believe they are.

17 Q So references in appendices to work papers
18 actually refer to ComEd's implementation of the
19 template work papers that have been presented in this
20 docket?

21 A Yes.

22 Q The final area I would like to talk about

1 is the process for the proceedings.

2 Could you describe for me or walk me
3 through the process of the reconciliation proceedings
4 beginning with January 1st of the year in which the
5 reconciliation will be filed?

6 A January 1st.

7 Q Yeah. What happens on January 1st and
8 sequentially thereafter? I don't know that anything
9 happens on January 1, but what's the process?

10 A Yeah, at some point, depending on when the
11 accounting area of the company is comfortable with
12 the previous year's books, and when the FERC Form 1
13 information is available, we start preparing for the
14 May 1st filing.

15 Then through a similar process as what
16 we would do for a rate case, the population of the
17 tariff is made in terms of introducing all the
18 accounting information that would be needed and we
19 would then on May 1st file that.

20 Q When does the FERC Form 1 preparation
21 begin? What is that process?

22 A You would have to ask either Mr. Fruehe or

1 Ms. Houtsma regarding that.

2 Q Okay. With respect to the Mr. Fruehe -- is
3 that how he pronounced it?

4 A Yes, Martin Fruehe.

5 Q Thank you.

6 With respect to the Illinois
7 regulatory process, I would like to know -- well, let
8 me back up.

9 You are aware of the concerns
10 expressed by IIEC about the availability and timing
11 of information related to the annual reconciliation?

12 A That was in the -- introduced as testimony
13 by Mr. Gorman?

14 Q Mr. Gorman, yes.

15 I would like, if you could, to
16 describe what it is that ComEd plans to make
17 available to the stakeholders in the way of
18 information and when they plan to make that
19 available.

20 A Everything that you see in this case is
21 going to be made available at the time of the May 1st
22 filing every year.

1 Q What will be available before the filing?

2 A We have no plans for anything to be
3 available unless -- I couldn't tell you whether FERC
4 Form 1 becomes public prior to that, I wouldn't know.

5 But there is nothing in our process
6 where we would make other information available prior
7 to May 1st.

8 MR. REDDICK: Thank you, Mr. Hemphill.

9 I have no further questions, your
10 Honor.

11 JUDGE SAINSOT: Thank you, Mr. Reddick.

12 CROSS-EXAMINATION

13 BY

14 MS. MUNSCH:

15 Q Good afternoon, Mr. Hemphill. My name is
16 Kristin Munsch, and I'm appearing on behalf of the
17 Citizens Utility Board.

18 A Good afternoon.

19 Q I wanted to follow up on some of the
20 discussion that you had earlier this morning.

21 Let me start by saying that, you
22 testified there would be reconciliations to adjust

1 the approved rates with, for example, the actual
2 costs from the prior year.

3 So in May 2012, there will be an
4 adjustment to reflect the actual 2011 expenses; is
5 that correct?

6 A Yes.

7 Q That adjustment would also take a look at,
8 as I think you characterized in your testimony, a
9 forward look at investments for that year; is that
10 correct?

11 A Yes.

12 Q And that's because the tariff, as you said,
13 the rates proposed to populate the formula are filed
14 in May, but obviously, ComEd would continue to make
15 adjustments the rest of that calendar year --
16 "investments" -- sorry -- I said "adjustments". I
17 meant expenses?

18 A Yes.

19 Q And the reason that we need to have a
20 reconciliation is because the actual costs might vary
21 as a result of the activity that's done during the
22 year. And I think you gave three reasons for that.

1 You said that would be because of regulatory action
2 because of utility's performance based on the metrics
3 in the case and because of the prudence
4 determination?

5 A Yeah, sorry, if I don't remember using
6 those three to talk about the reconciliation.

7 Q Let me ask it a different way: Actual
8 costs might vary with projections because of a
9 utility's performance under the formula rate plan, if
10 ROE is adjusted, for example?

11 A What do you mean by "performance"?

12 Q In your testimony you refer to the formula
13 rate as a performance base rate; is that correct?

14 A Yes.

15 Q And you say that ComEd's return on equity
16 could be adjusted based on its performance under the
17 performance aspect of the formula rate; is that
18 correct?

19 A You're referring to the metrics.

20 Q Is that correct? Yes?

21 A Yes.

22 Q And that's one reason why ComEd's actual

1 costs and recovery during the year might vary with
2 what was projected is "a" reason not "the" reason?

3 A Well, I'm having a hard time connecting the
4 metrics with the why the projected might be different
5 than the actual.

6 Q Let me say this: ComEd's rates for the
7 coming year would be based upon its return on equity,
8 as well as its rate base and return on that, and
9 operating expenses; is that right?

10 A Yes.

11 Q And if that return on equity would be
12 adjusted, then there would be a reconciliation for
13 what the return equity should have been?

14 MR. RIPPKE: I have to object.

15 Are you referring to an adjustment due
16 to the metrics?

17 MS. MUNSCH: Yes.

18 THE WITNESS: The reconciliation has to do with
19 an adjustment for what actually is invested during
20 the year compared to what was projected in the
21 previous year's proceeding.

22 BY MS. MUNSCH:

1 Q And one of the reasons that investment
2 might vary are because the investment isn't in effect
3 made in the latter part of the year for whatever
4 reason?

5 A That could be one reason, yes.

6 Q Or that the investments that's necessary
7 might be changed from in size or in dollar amount,
8 for example, number of meters?

9 A It would be the dollar amount that would
10 matter, yes.

11 Q And that that might be the investment might
12 also change because of the use of different
13 technology?

14 A If it affected the dollar amount, yes.

15 Q The prudence and reasonableness of an
16 investment are evaluated in each annual
17 reconciliation; is that correct?

18 A Yes.

19 Q And prudence and reasonableness of an
20 investment is evaluated after the investment has been
21 made?

22 A In the case of the reconciliation, that is

1 true.

2 Q And an example of one of the projects for
3 the investments that we are talking about is found in
4 your surrebuttal testimony where you make -- on
5 Page 16 where you make reference to the -- what the
6 characterize as a \$2.6 billion investment in
7 additional infrastructure. You characterize it at
8 Lines 330 through 331.

9 A The question regarding these lines is what?

10 Q Oh, I just wanted to say, is that an
11 example of a project whose investment costs might
12 vary from year to year?

13 A Yes.

14 Q In your direct testimony, you refer to the
15 formula rate as a performance-based rate; is that
16 correct?

17 A Yes.

18 Q And just to clarify, the performance that
19 you're speaking of are the statutory criteria found
20 in the Energy Infrastructure Modernization Act?

21 A Referring to the metrics.

22 Q Is that what -- I'm asking you?

1 A Yes.

2 Q Okay. In earlier discussion with -- I
3 believe it was Ms. Lusson, from the Attorney
4 General's office, you were asked about a statement in
5 your rebuttal testimony and you clarified for her --
6 it was on Page 6, so this is Exhibit 11.0 on Page 6
7 -- Page 8. I'm sorry.

8 And the discussion was about what the
9 phrase policy grounds apply to. And you answered
10 that for Ms. Lusson as saying that it applied to --
11 you gave an explanation that the phrase policy
12 grounds was meant to convey something that would run
13 counter to the spirit and intention of the formula
14 rate.

15 A Yes.

16 Q And by "formula rate," you were referring
17 to the Rate DSPP tariff; is that correct?

18 A Yeah, that's the tariff that drives the
19 formula rate.

20 Q Would that include what's described in your
21 Exhibit 1.2, The Energy Infrastructure Modernization
22 Act?

1 A That's part of what is described in 1.2,
2 yes.

3 Q You offer or you discuss in your
4 surrebuttal testimony that the formula rate, in your
5 opinion, offers certainty, simplicity and accuracy.
6 This is, in fact, on Page 6.

7 A I'll accept that.

8 Q Accuracy would mean that you're -- that
9 customers are paying the actual costs of ComEd, not
10 the projection projected costs?

11 A In the end of a cycle, as --

12 Q We just talked about with Mr. Reddick?

13 A As we just talked about with Mr. Reddick,
14 that's correct.

15 Q Simplicity would be that the formula, as
16 you discussed in your testimony, is made up --
17 specified by the General Assembly in the Energy
18 Infrastructure Modernization Act?

19 A I'm not sure I understand the question, but
20 the process that came out of that Act that we are
21 describing here, discussing here, is the simplicity
22 that I'm referring to, yes.

1 Q And the certainty is certainty for
2 Commonwealth Edison in terms of its cost recovery?

3 A It's certainty for both.

4 Q Both?

5 A Both, meaning Commonwealth Edison and its
6 customers.

7 So where, in other parts of my
8 testimony, I talk about it accurately reflecting the
9 costs, no more, no less. That's through the cyclical
10 process that's laid out in the Act and proposed here
11 provides that certainty for both, both the company
12 and the customers.

13 Q With respect to the project that we
14 discussed earlier that the investment in Smart Grid
15 on your surrebuttal testimony, you say that that
16 investment is being made in part to offer new and
17 innovative customer benefits?

18 MR. RIPPIE: Just to be clear, the surrebuttal
19 testimony referred to the entire 2.6 billion, not
20 just a portion.

21 MS. MUNSCH: Correct, yes.

22 BY MS. MUNSCH:

1 Q And you actually say, I think the phrase
2 is, "to further harden the system deploy Smart Grid
3 technologies and provide new and innovative customer
4 benefits"?

5 A Yes, that's my testimony.

6 Q Are the new and innovative customer
7 benefits you refer to there any benefits beyond the
8 performance metrics that were described earlier?

9 A Yes.

10 Q And what does "harden the system" mean?

11 A Improvements in terms of reliability.

12 MS. HICKS: Thank you.

13 JUDGE SAINSOT: By my calculations, we have
14 Mr. Jenkins next and then counsel for Department of
15 Energy and then counsel for Metra.

16 MR. RIPPIE: And CTA.

17 JUDGE SAINSOT: And CTA. Sorry.

18 CROSS-EXAMINATION

19 BY

20 MR. JENKINS:

21 Q Good afternoon, Mr. Hemphill. I'm Alan
22 Jenkins for the Commercial Group.

1 A Good afternoon.

2 Q If you could turn to your rebuttal
3 testimony, ComEd Exhibit 11.0. I'm on Page 14.

4 You describe there in Section D, going
5 on to the next page, one of your fundamental concerns
6 with testimony, and I believe toward the end of the
7 page, you're talking about potential loss of costs
8 between FERC and the Illinois Commerce Commission; is
9 that right?

10 A Well, it's not a loss of costs, if we lost
11 the cost that wouldn't be a problem. It's a trap
12 cost.

13 Q Okay.

14 A That is a cost that cannot be recovered
15 because of the inconsistency.

16 Q All right. And on Page 15, you're talking
17 about the difficulty could be that a certain set of
18 costs are functionalized by FERC as distribution and
19 functionalized is transmissioned by this Commission.

20 So if you have a -- let's just say you
21 have a set of \$100 of certain type of costs, and FERC
22 deems that this \$100 of cost is distribution costs,

1 and the Illinois Commerce Commission looks at it and
2 they say, "No, it's transmission costs." That's the
3 problem that you're addressing?

4 A Yes.

5 Q You would agree, wouldn't you, that flip
6 side is there is a problem as well if FERC looks at
7 that same \$100 of costs and considers it to be
8 transmission costs, and this Commission -- the
9 Illinois Commerce Commission, looks at the same \$100
10 of costs and says it's distribution costs, that would
11 be a potential double-recovery, correct?

12 A Yes, and I should have mentioned that
13 earlier, it works both ways.

14 Q Okay. Now at high level, would you agree
15 that once total system losses are known an increase
16 in the calculation of transmission losses necessarily
17 means a corresponding decrease in the calculation of
18 distribution system losses?

19 MR. RIPPIE: I have to ask for a clarification
20 as to whose system you're talking about? Just ComEd
21 transmission assets or PJM as a whole?

22 MR. JENKINS: This is a ComEd -- and we are not

1 focusing just on -- it's the whole delivery system of
2 ComEd.

3 MR. RIPPPIE: Okay, but the witness should be
4 answering to the extent he knows for the ComEd-owned
5 assets.

6 BY MR. JENKINS:

7 Q To the extent that there is an increase in
8 calculation of transmission system losses on ComEd,
9 would there not be a corresponding decrease in
10 calculation of distribution system losses?

11 A I'm not a loss expert, but I do believe
12 that is a zero sum phenomena.

13 MR. JENKINS: Nothing further.

14 JUDGE SAINSOT: Thank you, Mr. Jenkins.

15 CTA, Metra?

16 CROSS EXAMINATION

17 BY

18 MR. GOWER:

19 Q Good afternoon, Mr. Hemphill. I'm Ed
20 Gower, as you know. How are you?

21 A Good. How are you.

22 Q Good. I promise no hypotheticals.

1 As the Vice President of Regulatory
2 Policy and Strategy, you have executive
3 responsibility for ComEd's regulatory policies and
4 strategies; isn't that correct?

5 A Yes.

6 Q In fact, you're responsible for
7 implementing ComEd's regulatory policies and
8 strategies with respect to the new Section 16-108.5
9 of the Public Utilities Act; is that correct?

10 A Yes.

11 Q And part of your duties as the executive
12 responsible for ComEd's regulatory policies and
13 strategies includes ensuring that ComEd complies with
14 Illinois Commerce Commission orders and directives;
15 isn't that correct?

16 A Yes.

17 Q Do you recall that in the last ComEd rate
18 case, which was Docket 10-0467, the Commission
19 concluded that -- I'm going to quote from Page 191,.

20 "That based on the evidence
21 provided, it's clear that the railroad class
22 does not, and probably will never, take

1 service at 4 kV."

2 Do you recall that?

3 A I have the order in front of me, so I'll

4 remind myself.

5 Q Yeah.

6 That might be on 191. Let me

7 double-check.

8 Mr. Hemphill, it's on 191, if you're

9 looking at 190.

10 A I'm looking at 191.

11 Yes, that's correct.

12 Q And, in fact, the Commission concluded by

13 directing ComEd, and if you look further down in

14 that, I believe it's the next paragraph:

15 "That ComEd shall develop a

16 new embedded cost-of-service study

17 for the next rate case that excludes

18 the costs that are associated with

19 facilities below 12 kV for the

20 railroad class.

21 "This study should be part of

22 ComEd's initial rate case filing; failure

1 to comply with any portion of this
2 directive could subject ComEd to the
3 penalties provided in the Public Utilities
4 Act for failure to comply with a
5 Commission order."

6 Do you see that?

7 A Yes.

8 Q And as I understand it, Commonwealth Edison
9 has made a commitment to Metra and the CTA that
10 revise E costs eliminating the cost of the facilities
11 12 kV from the railroad class would be included in
12 the next rate design that ComEd files with the
13 Commission; is that correct?

14 A That's correct.

15 Q When will that rate design be filed with
16 the Commission?

17 A I do not know.

18 Q Okay. Could you please tell me why you
19 don't know when ComEd will fulfill its commitment to
20 file a rate design with the Commission that reflects
21 the elimination of 12 kV studies from the railroad
22 class?

1 A The wording that is in the statute that
2 we're following with regard to rates and
3 investigation states that any direction provided by
4 the Commission subsequent to the approval of the
5 formula rate tariff will be put into effect within
6 one year of that decision, so what we are doing is
7 assessing whether or not there will be such direction
8 provided by the Commission sometime hence, and then
9 we will comply with a filing within a year then.

10 Q Okay. What if the Commission -- let me
11 give you the actual language, if I might.

12 MR. GOWER: You want this marked as an exhibit,
13 Judge, it's an expert from the statute?

14 JUDGE SAINSOT: Sure why not.

15 THE WITNESS: Did I get it wrong?

16 MR. GOWER: Sorry?

17 THE WITNESS: I'm sorry, if I got it wrong.

18 JUDGE SAINSOT: Are we going to call that Metra
19 Cross-Exhibit 1.

20 MR. GOWER: Or I can just identify it. It's
21 Subsection (e).

22 THE WITNESS: Just to make sure I don't have

1 unclarity in the record, can I just read what I was
2 trying to paraphrase earlier?

3 BY MR. GOWER:

4 Q Sure.

5 Let me, for the record, just identify
6 what I just handed to you and then you can reference
7 what you're referring to in your prior testimony.

8 I just handed you a copy of what I
9 will represent is a copy of Section 16-108.5(e) of
10 the Public Utilities Act, which is codified at 220
11 ILCS5?

12 JUDGE SAINSOT: 5/16.

13 BY MR. GOWER:

14 Q 16.108.5(e) and I ask you to identify the
15 language to which you referred in your prior
16 testimony.

17 A So I'm going to read just to make sure it's
18 clear in the record.

19 So I'm reading from the tariff
20 following approval of a participating utility's
21 performance of a --

22 Q Let me stop you for a second, Mr. Hemphill.

1 Are you now going to read the second sentence of
2 Subsection (e)?

3 A Yes.

4 Q Okay. Go ahead.

5 A "Following approval of a participating
6 utility's performance-based formula
7 rate tariff, pursuant to Subsection C
8 of this section, the utility shall make
9 a filing with the Commission within
10 one year after the effective date of
11 the performance-based formula rate
12 tariff that proposes changes to the
13 tariff to incorporate the findings of
14 any final rate design orders of the
15 Commission applicable to the
16 participating utility and enter
17 subsequent to the Commission's
18 approval of the tariff."

19 Q And your uncertainty is based on this
20 language as to whether or not when ComEd will file a
21 new rate design is based on your uncertainty as to
22 when the Commission might enter an order subsequent

1 to this case?

2 A Yes.

3 Q And what if, within a year the Commission
4 has not entered any final rate design order, within
5 one year after the formula rate tariffs that will be
6 approved in this case in effect, what if the
7 Commission hasn't issued or initiated a rate case or
8 rate design case within a year, will ComEd then file
9 the new rate design that incorporates the (e) costs
10 that we talked about, the revised (e) costs, that we
11 talked about earlier?

12 A I can't say with certainty that we would.

13 Q So as you sit here today, you don't know
14 whether ComEd will be proposing a new rate design in
15 1 year or 2 years or 3 years? You just don't know
16 when; is that correct?

17 A Well, I believe that within 3 years, it's a
18 requirement that we either -- we file revenue neutral
19 tariffs or we file changes in tariffs that are
20 revenue neutral that reflect updated cost of
21 service.

22 Q That's each subsequent 3-year period; isn't

1 that correct?

2 A Yes.

3 Q So that refers to yet another 3 years after
4 the initial first year; does it not?

5 A Yeah, I'm not sure. I would have to think
6 about that whether it would be 3-plus 1 or 3.

7 Q So, otherwise stated, it's your
8 understanding that at least ComEd has to file a new
9 rate design in 3 to 4 years?

10 A Yes.

11 MR. GOWER: Can I have just one second.

12 JUDGE SAINSOT: Sure.

13 BY MR. GOWER:

14 Q Just so I understand, just so I am familiar
15 with your understanding of what is required by
16 Commonwealth Edison as a result of the last rate
17 case, you believe that the revised (e) cost that was
18 ordered in the new rate base may not have to be filed
19 with the Commission for 3 to 4 years from now?

20 A That's my understanding. I'm not a lawyer,
21 and I'm not used to interpreting statute, but that's
22 my understanding.

1 Q Were you involved in the decision to retain
2 Charles Box to testify in this proceeding?

3 MR. RIPPPIE: I object to the question. It
4 calls for privileged information and has no
5 relevance.

6 MR. GOWER: I didn't ask about -- I asked a
7 simple "yes" or "no" question.

8 MR. RIPPPIE: It still calls for privilege --

9 MR. GOWER: Excuse me. May I finish?

10 JUDGE SAINSOT: Wait a minute.

11 How is it privileged?

12 MR. RIPPPIE: The decision of whether or not to
13 retain him is a question of litigation strategy. The
14 decision of whether or not to put on a particular
15 witness is not a question of fact, it's a question of
16 litigation strategy.

17 It's not anything this witness
18 testified about, so -- but Mr. Gower has a point, I
19 cut him off, and before I make my objections, I
20 should let him finish his question.

21 JUDGE SAINSOT: Mr. Gower?

22 MR. GOWER: I didn't ask to invade any area of

1 privilege. I simply asked whether Mr. Hemphill was
2 or was not involved in that decision. And I don't --

3 BY MR. GOWER:

4 Q Mr. Hemphill, just so we are clear, I don't
5 want to talk to you about the substance of any
6 communications you had with your lawyers. I only
7 want to know as the director of regulatory policy and
8 strategy for Commonwealth Edison, who presumably has
9 charge over the budget in this case, whether you were
10 involved in this decision whether or not to retain
11 the former chairman of the ICC as a witness in this
12 case?

13 MR. RIPPPIE: The objection to that question
14 will be relevance and scope. Nothing in his
15 testimony talks about the selection of witnesses or
16 for that matter budgeting.

17 JUDGE SAINSOT: He does have a point there.

18 MR. GOWER: They just filed a brief in which
19 they said they hired this guy for his testimony
20 concerning ratemaking policy. It's in the Footnote 6
21 of their brief.

22 This is -- they brought Mr. Box in as

1 a surrebuttal testimony witness, so of course, his
2 testimony doesn't reference that.

3 But now they filed a brief saying he's
4 a ratemaking policy witness. This is their policy
5 witness. I simply want to explore what his
6 understanding of Mr. Box's qualifications is, whether
7 he had any conversations with him and let it go at
8 that.

9 MR. RIPPIE: It's beyond the scope of his
10 testimony. The fact that we brought in a witness in
11 surrebuttal testimony doesn't mean he gets to ask
12 every one of our witnesses about that subject.

13 He's not talked about witness
14 selection or budgeting. It's not this witness'
15 position to talk about that subject.

16 JUDGE SAINSOT: Mr. Gower, the objection is
17 sustained. Sorry about that. It is beyond the
18 scope. You can move on, though.

19 BY MR. GOWER:

20 Q Have you ever discussed ratemaking policy
21 with Mr. Box?

22 MR. RIPPIE: Same objection.

1 MR. GOWER: Those are not.

2 MR. RIPPIE: If that were a purely foundational
3 question anything that could possibly not be beyond
4 the scope or relevant, I wouldn't have this
5 objection.

6 But the point of asking whether he
7 ever discussed ratemaking policies with the chairman
8 is not asked whether or not four years ago at a
9 neighborhood conference that they talked about gas
10 pipelines. It's a prerequisite to going down the
11 same line of questioning that I previously objected
12 to, and that's the basis of my objection.

13 JUDGE SAINSOT: I think it's still beyond the
14 scope, too. Sorry about that, Mr. Gower.

15 MR. GOWER: All right. I'm done. Thank you.

16 JUDGE SAINSOT: Okay. Counsel, for the CTA.

17 MR. BALOUGH: Your Honors, we have no questions
18 for this witness.

19 JUDGE SAINSOT: Anybody here on behalf of the
20 Department of Energy? I guess -- any redirect?

21 MR. RIPPIE: There may be about four questions
22 if your Honor if we could take our 5-minute break

1 now, then we can also get ready for our next witness.

2 JUDGE SAINSOT: I think I have two questions
3 for Mr. Hemphill. They're very simple questions.

4 We will take a 5-minute break.

5 (Whereupon, a recess was taken.)

6 CROSS-EXAMINATION

7 BY

8 JUDGE SAINSOT:

9 Q My first question, Dr. Hemphill, is about
10 your house-buying example.

11 I just want to make it clear that when
12 you're talking about buying a house initially, that
13 house has a distinct value that can be quantified
14 when its bought, correct?

15 A That's correct.

16 Q And the second question, I'm just asking
17 you as a general ComEd employee and, frankly, just
18 because you're the first witness.

19 I'm a little confused about the
20 retirement system at ComEd.

21 Let's say, there is a lot of issues,
22 but there is a lot of contention around the pension,

1 but then Mr. Fruehe's rebuttal testimony, he started
2 talking about ADIT related to a 401K plan.

3 Do you have one? The other? Both?
4 Some kind of mixture?

5 A I would ask Mr. Fruehe that question.

6 JUDGE SAINSOT: Okay. He's next, so I can do
7 that.

8 THE WITNESS: Okay.

9 JUDGE SAINSOT: Thank you.

10 Redirect?

11 REDIRECT EXAMINATION

12 BY

13 MR. RIPPIE:

14 Q Dr. Hemphill, I'll try to be very brief.

15 Do you recall during questioning by
16 Ms. MUNSCH on behalf of the Citizens Utility Board,
17 you were asked whether the Commission could review
18 the prudence and reasonableness of a utility
19 investment during the reconciliation proceeding.

20 Is that the only proceeding during
21 which the Commission can review the prudence and
22 reasonableness of a utility investment?

1 A Well, it's not really referring to the
2 proceeding. The parts of each proceeding, one part
3 is the reconciliation, another part is the projection
4 of the capital spent for the current year.

5 So what you have is there is prudence
6 and reasonableness on the reconciliation from the
7 previous year. There is prudence and reasonableness
8 on the projection for the current year.

9 Then, again, as we go through the
10 cycle for that current year, for which there was the
11 prudence and the reasonableness evaluation on it,
12 when you go through the reconciliation of that, you
13 get another bite at the apple in terms of prudence
14 and reasonableness on that.

15 Q Much earlier in your examination,
16 Ms. Lusson asked you about the types of risk that
17 could be addressed by a formula rate regime,
18 especially with respect to regulatory lag.

19 Do you recall those questions?

20 A Yes.

21 Q And if I recall you expressed some doubt
22 about answering them exclusively, if that is in terms

1 of there only being certain kinds of risks.

2 What other types of risks were you
3 thinking about at that time?

4 A And I thought I elaborated on it, but just
5 to be clear, there is the risk that the costs that
6 are in the proceeding are disallowed and investments
7 are disallowed.

8 If those are disallowed --
9 particularly if they're costs that have already been
10 incurred, that is a significant risk.

11 Q So if ComEd remained in a regime where
12 actual prudent and reasonable costs of service were
13 disallowed on some of the grounds that you criticized
14 in your testimony, would that, in your view, be a
15 regime that posed minimal or small risk to ComEd?

16 A No.

17 MR. RIPPPIE: Thank you. That's all I have.

18 JUDGE SAINSOT: Any recross?

19 (No response.)

20 JUDGE SAINSOT: Okay. You may step down,
21 Mr. Hemphill. Thank you.

22 Okay. What we sort of mapped out

1 informally is to have Mr. Fruehe go for approximately
2 half, and then when there is a break of 15-minutes
3 so. . .

4 (Whereupon, a recess was taken.)

5 JUDGE SAINSOT: Okay. Ready?

6 MS. BARRETT: Before I begin my direct of
7 Mr. Fruehe, I need to enter an appearance on the
8 record. Ronit C. Barrett, Eimer Stahl, LLC, on behalf
9 of Commonwealth Edison Company, 224 South Michigan
10 Avenue, Suite 1100, Chicago, Illinois 60604.

11 (Witness sworn.)

12 MARTIN G. FRUEHE,
13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY

17 MS. BARRETT:

18 Q Mr. Fruehe, would you state and spell your
19 full name for the record.

20 A Martin G. Fruehe, M-a-r-t-i-n, F-r-u-e-h-e.

21 Q And by whom are you employed?

22 A Commonwealth Edison Company.

1 Q And what is your position there?

2 A I'm manager of revenue policy.

3 Q Have you offered written testimony in this

4 proceeding?

5 A Yes.

6 Q I believe there are three pieces of

7 testimony. The first piece is marked ComEd

8 Exhibit 4.0, it's entitled, Direct Testimony of

9 Martin G. Fruehe, Manager of Revenue Policy for

10 Commonwealth Edison Company, 4.5,

11 4.6 corrected, and 4.7 through 4.10; is that correct?

12 A Yes.

13 Q Was this direct testimony prepared by you

14 or under your direction and control?

15 A Yes.

16 Q Is it true and correct to the best of your

17 knowledge and belief?

18 A Yes, it is.

19 Q And have there been any updates in later

20 testimony?

21 A Yes, there are updates, which are included

22 in my rebuttal testimony and surrebuttal testimony.

1 Q So subject to that qualification, if I were
2 to ask you the same questions today, would your
3 answers be the same?

4 A Yes.

5 MS. BARRETT: Your Honors, this Direct
6 Testimony was E-Docket filed on November 8th, 2011,
7 except for Exhibit 4.6 corrected, which was E-Docket
8 filed on November 16, 2011.

9 The second piece of testimony is ComEd
10 Exhibit 2.0, which is entitled, Rebuttal Testimony of
11 Martin Fruehe, Manager of Revenue Policy of
12 Commonwealth Edison Company. It consists of 46 pages
13 of questions and answers and attached Exhibits 13.1
14 through 13.8.

15 BY MS. BARRETT:

16 Q Is that your rebuttal testimony in this
17 proceeding?

18 A Yes.

19 Q And was it prepared under your direction
20 and control?

21 A Yes.

22 Q Is it true and correct, to the best of your

1 knowledge and belief?

2 A Yes.

3 Q And have there been any updates in later
4 testimony?

5 A Yes, there was updates, which I presented
6 in my surrebuttal testimony.

7 Q Subject to that qualification, if I were to
8 ask you the same questions today, would your answers
9 be the same?

10 A Yes, they would.

11 MS. BARRETT: Your Honors, that was E-Docket
12 filed on February 3, 2012.

13 BY MS. BARRETT:

14 Q The third piece of testimony is ComEd 22.0,
15 it's entitled, Surrebuttal Testimony of Martin G.
16 Fruehe, Manager of Revenue Policy, Commonwealth
17 Edison Company. It consists of 26 pages of questions
18 and answers and attached are Exhibits 22.1 through
19 22.8.

20 Is that your surrebuttal testimony in
21 this proceeding?

22 A Yes.

1 Q Was it prepared under your direction and
2 control?
3 A Yes.
4 Q And is it true and correct, to the best of
5 your knowledge and belief?
6 A Yes.
7 Q Subject to that qualification, if I were to
8 ask you the same questions today, would your answers
9 be the same?
10 A Yes, they would.
11 MS. BARRETT: Your Honors, that was E-Docket
12 filed March 2, 2012.
13 I hereby move ComEd 4.0, 4.1 through
14 4.5, 4.6 corrected, 4.7 through 4.10, 13.0. 13.1
15 through 13.8, 22.0 and 22.1 through 22.8 into the
16 record.
17 JUDGE SAINSOT: Any objection?
18 (No response.)
19 JUDGE SAINSOT: Hearing none, your motion is
20 granted, Counsel. You can proceed.
21
22

1 (Whereupon, ComEd 4.0, 4.1
2 through 4.5, 4.6 corrected, 4.7
3 through 4.10, 13.0. 13.1
4 through 13.8, 22.0 and 22.1
5 through 22.8 were admitted into
6 evidence.)
7 MS. BARRETT: We tender the witness for
8 cross-examination.
9 MR. FEELEY: Judge Sainsot, we are not on list,
10 but Staff does have a few questions, but we will wait
11 till the end if that's all right.
12 JUDGE SAINSOT: Is that any surprise? Does
13 anybody have a problem with that?
14 (No response.)
15 JUDGE SAINSOT: Okay. Go ahead.
16 CROSS-EXAMINATION
17 BY
18 MR. FEELEY:
19 Q Good afternoon, Mr. Fruehe. My name is
20 John Feeley. I represent the Staff. These questions
21 are with regard to your rebuttal testimony.
22 At Pages 38 through 40 of your

1 rebuttal testimony, it discusses Staff's proposal to
2 remove the recovery of uncollectible expense from the
3 formula rate revenue requirement, and in the future
4 periods uncollectible expense would be recovered
5 through Rider UF (unintelligible).

6 Do you recall that?

7 A Yes, I do.

8 Q Then at Lines 848 through 857, you discuss
9 additional changes to the formula rate template that
10 would be necessary to accomplish that proposal, and
11 one of your recommendations that you propose is to
12 add a line to Schedule FRA-3 between Lines 10 and 11
13 to remove uncollectible costs included in delivery
14 service revenue.

15 Do you recall that?

16 A Yes, I do.

17 Q Okay. Has that proposed change been
18 reflected in the formula template filed in the case?

19 A Not in this surrebuttal case, no.

20 Q And when would ComEd reflect that change to
21 schedule RA-3?

22 A I don't know the exact timing of it, but

1 after the Commission's final order, the Commission
2 accepts that, ComEd will file an updated copy of
3 that.

4 MR. FEELEY: Thank you. That's all I have.

5 CROSS-EXAMINATION

6 BY

7 MS. YU:

8 Q Good afternoon, my name is Cathy Yu, from
9 the AG's office. I have a couple of questions.

10 In your surrebuttal testimony,
11 Page 12, starting around the middle, you talk about
12 CWP -- which is Construction Work in Progress and
13 AFUDC, along with the --

14 (Brief interruption.)

15 Were on your surrebuttal, Page 12 and
16 you talk about CWP and AFUDC.

17 Do you recall that?

18 A Yes.

19 Q Okay. For the CWP that's not included in
20 rate base, does ComEd accrue AFUDC on it?

21 A The CWP we do not include in rate base does
22 accrue AFUDC, yes.

1 Q And AFUDC accrued then provides ComEd with
2 return on that CWP; is that correct?

3 A An eventual return, yes.

4 Q I have a document here that I have marked
5 as AG Cross-Exhibit, and it is ComEd's response to AG
6 DR 5.02.

7 In this document, if you look at the
8 response, it states that the credit balance of
9 accrued vacation at the end of each month for the
10 months January through November of 2010 was
11 49.5 million.

12 And this amount was, this
13 49.5 million, that was used from January to November,
14 that's from December of the previous year, which
15 would be 2009; is that correct?

16 A Yes, that's correct.

17 Q So in the accounting, it's assumed that
18 there will be an outstanding balance of accrued
19 vacation reserve, and that's why the credit balance
20 is taken from the adjustment in December of any given
21 year, and then maintained through November of
22 whichever year its following.

1 So in this case, December of 2009,
2 that amount was the amount used for the months
3 January through November of 2010?

4 A Yes. This balance is updated once per year
5 at the end of the year, given that ComEd does not
6 know when employees are going to take their vacation,
7 we do not adjust the balance.

8 We do know that on December 31st that
9 it's likely that employees return on the 1st or 2nd
10 of the year after the holiday, and at that time, they
11 will be awarded their vacation, which they're
12 eligible to take any time during the year.

13 Again, we don't know at which time
14 they take that vacation, so we do not adjust that
15 down until the end of the year. It is simply an
16 accounting accrual for that year.

17 Q But there is the assumption that there will
18 be an outstanding balance, which is why the amounts
19 they use for the months January through November of
20 the following year, you use the same number that you
21 adjusted, so to speak, from December of the previous
22 year?

1 A I guess when you say --

2 Q For accounting purposes?

3 A I'm sorry.

4 Q Sorry.

5 A When you say "assume there will be an

6 outstanding balance," what do you mean "assume there

7 will be an outstanding balance"?

8 Q For accounting purposes, you use the same

9 number that you adjusted in December of, say, 2009

10 and you used that same number for pretty much the

11 entire following year for accounting purposes?

12 A We use that same number, again, because we

13 don't know when an employee is -- although they will

14 be eligible for vacation -- we don't know exactly

15 when they will take vacation.

16 And given the number of employees, we

17 have to adjust for each time they take a vacation

18 will be almost impossible from an accounting

19 standpoint.

20 Q And throughout the year are employees

21 continuing to accrue vacation time?

22 A No, they're not.

1 Q So from, say, when you calculated the
2 balance in December of 2009, and that's in this case
3 49.5 million, and then for the months from January
4 through November, you use the same number because of
5 uncertainty, you use the same number in calculating
6 the balance of accrued vacation reserve -- strike
7 that.

8 So in 2010 from January to November,
9 the 49.5 million, that's the assumption that you use
10 for accounting purposes from December of 2009; am I
11 getting that correct?

12 A That, and the 49.5 million represents the
13 vacation liability recorded on the books in
14 December -- at the end of December of 2009 for the
15 coming year. It does not represent any particular
16 month of the year.

17 Q But that is the number used for most of the
18 year in 2010 until it is adjusted again in December?

19 A That's the number that is reported on our
20 books for the year until the end of December.

21 Q Okay. I've got another document here that
22 I have marked AG Cross Exhibit 2. This is ComEd's

1 response to AG --

2 JUDGE SAINSOT: Ms. Yu, are you seeking to have
3 any of these put into evidence?

4 MS. YU: I am. Should I move them at the end
5 or do you want to move them into the evidence now?

6 JUDGE SAINSOT: I don't care. You can do it
7 when you like. I just want it to be made clear.

8 MS. YU: This is AG Cross-Exhibit 2 and ComEd's
9 response to AG Data Request 2.11.

10 BY MS. YU:

11 Q In this document here, in this response,
12 ComEd indicates for tax year 2011, ComEd intended to
13 modify its accounting for the repair instruction,
14 pursuant to Revenue Procedure 2011-43; and thus,
15 reflected the state of results in here, which
16 included a Section 481-A adjustment; is that correct?

17 Do you see that in the response?

18 A That's what it says, yes.

19 Q ComEd also stated in this response that
20 Section 481-A, that adjustment, the catch-up
21 adjustment, so to speak, it's estimated to be
22 approximately 600 million in this.

1 Do you agree that that catch-up
2 adjustment would have the effect of increasing the
3 ADIT by about 240 million, which is the 600
4 million -- 40 percent of the 600 million, which is
5 approximately the combined tax rate.

6 Would that roughly be your
7 calculations, as well?

8 A I'm okay with your calculations that you're
9 using.

10 Q So this, approximately, 240 million, this
11 would be an increase to the ADIT, and this increase
12 is not current incorporated into the determination of
13 the Company's rate base, is it?

14 A No, it's not because the legislation
15 requires us to use the 2010 balance.

16 Q Is the ADIT for this catch-up adjustment
17 taken into consideration -- strike that.

18 Is the ADIT for the Section 481-A
19 catch-up adjustment, is that incorporated into the
20 company's rate base -- I'm sorry. Strike that.

21 So referring to -- I have copies here
22 of AG/AARP Exhibit 1.11.

1 Do you have copies of that or would
2 you like?

3 A If you have one there, that would be
4 easier. I'm afraid the books might fall again.

5 Q This is just the exhibit that we filed.

6 JUDGE SAINSOT: It's not technically in the
7 record, but it's prefiled somewhere; is that correct?

8 MS. YU: Yes, it is.

9 BY MS. YU:

10 Q If you flip to the end of that, it's the
11 last page on the copy that I gave you.

12 A Is this is AG 118?

13 Q Yes, this is ComEd's response to
14 AG/DR1.15.

15 Do you agree in response to this data
16 request here, AG 1.15, ComEd objected to providing
17 information regarding which key managers were awarded
18 through the restricted stock award program in the
19 response?

20 MS. BARRETT: I think the question might have
21 been incomplete. You said -- what were you asking
22 him about?

1 MS. YU: Sorry. I will rephrase.

2 BY MS. YU:

3 Q In the response to this data request, ComEd
4 objected to providing information regarding which key
5 managers were awarded through the purchase stock
6 award program; is that correct?

7 A They objected to the identification of each
8 individual.

9 Q And do you agree also that ComEd objected
10 to providing information on the performance criteria
11 that were employed to determine the stock grant
12 amounts for these key managers? I will draw your
13 attention to RC.

14 A Yes, we objected to it because the
15 restricted stock awards are not tied to any
16 performance measures or specific performance measures
17 of any key manager.

18 Q Do you, anywhere in your testimony, provide
19 exactly how the amount of stock awarded to each key
20 manager was determined in 2010?

21 A Exhibit 4.9 of my direct testimony provides
22 an overview of the program.

1 Q I'm sorry. It provides?

2 A An overview of the restricted stock
3 program.

4 Q Do you provide details on how the amount is
5 determined and how the amount of stock awarded to
6 these key managers was determined in 2010?

7 A Exhibit 4.9 provides information as far as
8 how ComEd reviews or actually how ComEd's -- I'm
9 sorry -- how Exelon reviews the industry and how it
10 believes Exelon and ComEd stock awards restricted
11 stock award programs are in line with industry
12 standards.

13 Q Do you provide detailed individual
14 performance criteria anywhere in your testimony, the
15 criteria being those that are used by the Company to
16 decide how much stock to award?

17 A The restricted stock program is not tied to
18 any specific individual parameters. It's part of
19 being a key manager. It's basically part of your
20 compensation packet. It's truly no different. It's
21 part of your salary, I guess, I would say, and just
22 awarded over three years. And the incentive part of

1 the program is expecting the employees to stay with
2 the company.

3 Q Okay. Did you provide in your testimony,
4 however, performance criteria or details as to how
5 this package --

6 MS. BARRETT: I will object to you continuing
7 to ask him about performance criteria. He testified
8 there are no performance criteria basically.

9 JUDGE SAINSOT: So it's asked and answered?

10 MS. BARRETT: Asked and answered.

11 JUDGE SAINSOT: She's correct.

12 BY MS. YU:

13 Q Would you agree that the value of Exelon
14 common stock is primarily tied to the Company's
15 overall financial performance?

16 A Can you define the "company" please.

17 Q Exelon. Would you agree that -- I will
18 rephrase.

19 Would you agree that the value of
20 Exelon common stock is primarily tied to Exelon's
21 overall financial performance?

22 A Not entirely, no.

1 The stock's price is going to be based
2 upon a lot of things; obviously, the Company's
3 operational and financial performance are important,
4 but there are external factors; such as, weather,
5 regulations, competition, market condition, that can
6 all drive a stock's price.

7 Q Would you agree that Exelon's overall
8 financial performance -- would you agree that
9 Exelon's overall financial performance has a greater
10 impact on the value of Exelon's common stock than,
11 say, the quality of service that is provided by
12 ComEd?

13 MS. BARRETT: I'm going to object based on
14 foundation. I'm not sure the witness can answer
15 that. I guess to the extent he's capable of
16 answering, it's okay, but . . .

17 JUDGE SAINSOT: Because he's not an Exelon
18 employee or I'm not quite sure --

19 MS. BARRETT: I don't think he's an expert in
20 the value of Exelon stock and how it's valued and the
21 factors of that, and I don't think he's testified on
22 that.

1 JUDGE SAINSOT: Why don't you try to rephrase.

2 BY MS. YU:

3 Q Would you agree that the value of Exelon
4 common stock is more tied to Exelon's overall
5 financial performance rather than a factor such as
6 the quality of service provided by ComEd?

7 MS. BARRETT: Same objection.

8 JUDGE SAINSOT: Sustained.

9 BY MS. YU:

10 Q Would you agree that Exelon's overall
11 financial performance is a key factor in the value of
12 Exelon's common stock?

13 A I would agree that Exelon's financial and
14 operational performance are -- I guess, I would say
15 they are certainly inputs into the value of common
16 stock. To the actual degree, I couldn't tell you
17 exactly what that is.

18 Q Okay.

19 MS. YU: No further questions.

20 I would like to move to admit AG
21 Cross-Exhibits 1 and 2 into the record.

22 JUDGE SAINSOT: Any objections?

1 MS. BARRETT: Let me just look at the beginning
2 of Cross-Exhibit 2 for one moment.

3 JUDGE SAINSOT: Sure.

4 MS. BARRETT: No objection.

5 JUDGE SAINSOT: No objections from anyone else?
6 (No response.)

7 JUDGE SAINSOT: Hearing none, your motion is
8 granted, Counsel.

9 AG Cross-Exhibit and AG
10 Cross-Exhibit 2 are admitted into evidence.

11 (Whereupon, AG Cross-Exhibit
12 Nos. 1 and 2 were admitted into
13 evidence.)

14 JUDGE SAINSOT: I think now might be a good
15 time to take a break. We have CUB still and the
16 IIEC.

17 Anybody else I'm missing? AARP?

18 MR. COFFMAN: I'm waiving my questions.

19 JUDGE SAINSOT: You have no questions, right?

20 MS. BARRETT: That's AARP.

21 JUDGE SAINSOT: Yes.

22 So now if we come back at 4:00, we

1 should be able to finish up before 5:00 still.

2 MR. RIPPIE: Yes.

3 (Whereupon, a recess was taken.)

4 JUDGE SAINSOT: Okay. Who's next?

5 CROSS EXAMINATION

6 BY

7 MS. HICKS

8 Q Good afternoon, Mr. Fruehe. My name is

9 Christie Hicks. I represent the Citizens Utility

10 Board.

11 I'm going to start off by asking you a

12 few questions about accumulated deferred income

13 taxes, which I will also refer to as ADIT.

14 A Okay.

15 Q You responded to the testimony of the CUB

16 Witness Mr. Smith and AG/AARP Witness Mr. Effron on

17 the issue of ADIT associated with 2011 plant

18 additions; is that correct?

19 A Yes, I did.

20 Q For this phase of the formula rate plan,

21 ComEd proposes not to include ADIT related to 2011

22 distribution plant; is that right?

1 A ComEd's position is the ADIT associated
2 with the 2011 projected plant additions should not be
3 included in this calculation of rate base for this
4 proceeding.

5 Q Now, I would like to show you what I have
6 marked as CUB Cross-Exhibit 1.

7 MS. HICKS: Your Honors, may I approach the
8 witness?

9 JUDGE SAINSOT: Yes, you may.

10 Are you going to offer these into the
11 record?

12 MS. HICKS: A note for the record, the Company
13 has designated an attachment to the exhibit I have
14 passed out, which is the data request response to CUB
15 4.01. It's been designated by the Company as
16 Confidential. I have given the court reporter copies
17 of both the public and confidential versions.

18 I'm not going to refer to any of the
19 confidential information so we can avoid closing the
20 hearing to the public, if that's all right.

21 MS. BARRETT: That's fine.

22 BY MS. HICKS:

1 Q Mr. Fruehe, do you recognize the document I
2 just handed you?

3 A Yes, I do.

4 Q What is it?

5 A It's a data request from CUB that's asking
6 for ComEd's estimation of the depreciation ADIT
7 related to the 2011 actual plant additions.

8 Q Did you prepare this response?

9 A It was prepared under my supervision.

10 Q All right. And if I could direct your
11 attention to the first page of the attachment.

12 Could you please read for me the grand
13 total of the jurisdictional ADIT that ComEd has added
14 for the 2011 jurisdictional plant additions?

15 A I will first note, this is still an
16 estimate. As I noted here, since the ComEd FERC
17 Form 1 has not yet been filed that these are still
18 preliminary numbers.

19 Q With that understanding?

20 A The number on the jurisdictional ADIT is
21 \$290,531,136.

22 Q Thank you.

1 Now, I want to go back very briefly to
2 a couple of questions that Ms. Yu asked you, and I
3 just want to clarify: As employees use their
4 vacation time throughout the year, are they also
5 accruing vacation time throughout the year?

6 A No, they're really not.

7 Vacation pay is not awarded until the
8 first of the year.

9 So, for example, if an employee were
10 to leave on December 31st, that employee would not be
11 awarded the vacation days for the coming year.

12 Q So do ComEd employees have available to
13 them on January 1st all of their vacation time for
14 the year?

15 A Yes, they do.

16 Q All right. Thank you.

17 MS. HICKS: I have no further questions then
18 and I would move for the admission of CUB
19 Cross-Exhibit 1.

20 MS. BARRETT: We do have an issue with
21 Cross-Exhibit 1 in that, as Mr. Fruehe discussed,
22 it's related to 2011 actuals, and what currently is

1 in the revenue requirement is 2011 projections.

2 But I guess that we would reserve that
3 objection to argue it in the briefs, then we would be
4 okay with admitting it now; otherwise, I think we
5 would have a relevance objection.

6 MS. HICKS: Well, I would have a hard time
7 having an objection reserved at this point, as we are
8 on a statutory timeline. I would prefer a ruling
9 now, if I could have one.

10 JUDGE SAINSOT: Ms. Hicks, I think you made it
11 clear, at least to me, that you understand these are
12 just projections; is that correct? The numbers that
13 are attached, the first page of the attachment to
14 the --

15 MS. HICKS: Are estimates.

16 JUDGE SAINSOT: Yes, estimates.

17 MS. BARRETT: Estimates of the actuals, as
18 opposed to the projections that were made previously.

19 JUDGE SAINSOT: I chose my words very poorly,
20 but it's 4:10, you will have to excuse me.

21 I understood Ms. Hicks to understand
22 that these were not firm numbers that couldn't

1 change, so I think just noting that gives you all
2 what you need.

3 MS. HICKS: Okay. So it's admitted then with
4 that understanding?

5 JUDGE SAINSOT: It is admitted with that
6 understanding -- that clarification.

7 MS. HICKS: Thank you very much, your Honor.

8 (Whereupon, CUB Cross-Exhibit
9 No. 1 was admitted into
10 evidence.)

11 CROSS EXAMINATION

12 BY

13 MR. REDDICK:

14 Q Good afternoon, Mr. Fruehe. My name is
15 Conrad Reddick. I represent the IIEC.

16 A Good afternoon.

17 Q Your duties include oversight of rate case
18 related activities at both the state and federal
19 levels, correct?

20 A Yeah, and I would define rate case
21 activities to developing and supporting the revenue
22 requirements in both jurisdictions.

1 Q Do your responsibilities include any
2 procedural aspects of rate case activities?

3 A I'm sorry. Could you define what you mean
4 by "procedural aspects."

5 Q What ComEd does when ComEd does it.

6 A I would say, no. My role is to develop
7 ComEd's revenue requirement in support of the rate
8 case.

9 Q Are you involved in the preparation of the
10 FERC Form 1?

11 A I review some of the materials within the
12 FERC Form 1 before they're made public, yes.

13 Q And are you responsible for making sure it
14 gets filed or anything of that sort?

15 A No, I'm not.

16 Q Who is?

17 A The purview falls under our CFO, ComEd CFO
18 would be responsible for making sure the document
19 gets filed.

20 Q Can you tell me who of the witnesses in
21 this case is the most familiar with that process?

22 A I am familiar with that process, yes.

1 Q When is ComEd's FERC Form 1 filed with
2 FERC?

3 A Typically, we file it towards the end of
4 March; although, it's not due until, I believe, it's
5 April 20th, but that could be the 19th or 21st. I
6 don't remember the exact date. We usually try to get
7 it out a month in advance, but we are under no
8 requirement to do so.

9 Q Is the FERC Form 1 a public document?

10 A Yes.

11 Q As of when?

12 A When it's filed.

13 Q When it's filed.

14 And I'm sorry, you said usually the
15 end of March, even though it's not due until
16 somewhere around the third week of April; is that
17 correct?

18 A That's correct.

19 Q Okay. During the period between ComEd's
20 filing the FERC Form 1 at FERC, and the time ComEd is
21 required to make its reconciliation filing at this
22 Commission, has ComEd contemplated any arrangements

1 to answer questions regarding the FERC Form 1 during
2 that period?

3 A Not to my knowledge, but I believe others
4 are free to ask questions if they have any.

5 Q If asked, will ComEd respond?

6 MS. BARRETT: Objection; I think this witness
7 has testified that he isn't involved in the
8 procedural aspects as you defined them.

9 He's trying to answer your questions
10 about the FERC because he does know about that, but
11 I'm not sure he can answer your questions.

12 JUDGE SAINSOT: Can you repeat your question.

13 MR. REDDICK: I'm not sure I remember the
14 question at this point.

15 JUDGE SAINSOT: Let's ask the court reporter,
16 that's what they're here for, right.

17 (Whereupon, the record was read
18 as requested.)

19 JUDGE SAINSOT: I think it was the question
20 before that.

21 MR. REDDICK: Well, no, the question before
22 that was Mr. Fruehe said, they can ask. My question

1 was: If we ask, will ComEd respond.

2 JUDGE SAINSBOT: Okay. I think he can answer
3 that, if he knows. He may not know.

4 THE WITNESS: To the best of my belief, yes, I
5 believe ComEd would respond to questions about the
6 FERC Form 1.

7 BY MR. REDDICK:

8 Q In your testimony, you describe yourself as
9 the one responsible for the review and evaluation of
10 potential regulatory alternatives for ComEd.

11 What kind of alternatives does that
12 description refer to?

13 MS. BARRETT: Could you point us to his
14 testimony that you're referring to?

15 MR. REDDICK: Line 119 of his direct.

16 THE WITNESS: Let me answer it this way:

17 If ComEd has a regulatory requirement,
18 which would result in some type of rider being filed,
19 I may be involved in some of the calculations that
20 feed into the rider itself; more common is
21 contemplating alternative recovery mechanism. I may
22 be involved in the development of calculations as

1 well.

2 BY MR. REDDICK:

3 Q What is your involvement or anticipated
4 involvement in the May 1st filings required for the
5 reconciliation of the formula rates?

6 A I believe it's very similar to the
7 testimony exhibits that I filed in this case.

8 In other words, I would be responsible
9 for supporting ComEd's revenue requirement, for the
10 actual for 2011, as well as I would be responsible
11 for the calculations in the reconciliation, and
12 finally, the calculations for the projected plant
13 additions, appreciation expense change, and change in
14 the appreciation reserve.

15 Q Do you know whether that May 1st filing
16 will include testimony to explain the schedules that
17 you prepare?

18 A Yes, I believe it will.

19 Q As I understand the process after ComEd's
20 makes its reconciliation filing, the ICC has a period
21 when it can review the filing and make a
22 determination whether to open a proceeding.

1 Is that your understanding?

2 A That is my understanding; although, I guess
3 I would have to say, subject to check, because I'm
4 not completely familiar with the rider itself. It's
5 a technical aspect. I would have to check, and I
6 believe it does.

7 JUDGE SAINSOT: I'm not sure which filing.
8 There is a lot of filings.

9 MR. REDDICK: The main reconciliation filing is
10 the one I was referring to in the last question.

11 JUDGE SAINSOT: Okay.

12 BY MR. REDDICK:

13 Q Would you describe the reconciliation
14 filing.

15 A The reconciliation filing will calculate
16 the revenue requirements of the actual cost incurred
17 in 2011. It will compare that to the weighted
18 average of the revenue requirements in effect in
19 2011.

20 Q And do you know whether any arrangements
21 have been made to respond to inquiries regarding the
22 filing before the ICC opens a docket?

1 A I'm not aware of any specific arrangements.

2 MR. REDDICK: Thank you. Nothing further, your
3 Honor.

4 MS. BARRETT: We may have one or two questions
5 on redirect, if could have a moment.

6 JUDGE SAINSOT: I just have one question for
7 Mr. Fruehe.

8 CROSS EXAMINATION

9 BY

10 JUDGE SAINSOT:

11 Q I'm just a little confused, and I just need
12 a general background. I'm just a little confused
13 because there's all this testimony about the pension
14 assets and other pension issues.

15 And then I saw later in the testimony,
16 there was something about ADIT related to 401-k.

17 I would just like to know very
18 generally what ComEd has in terms of retirement.

19 A Sure.

20 ComEd has actually two plans. ComEd
21 has a pension plan and ComEd has a 401-k plan.

22 The pension plan, up until

1 approximately 2001, I don't know the exact date was a
2 defined benefits plan.

3 After that, ComEd switched to a cash
4 balance plan in order to reduce costs, the pension
5 costs.

6 ComEd/Exelon also offer a voluntary
7 401-k plan, which an employee can participate.

8 Q That's in addition to the pension?

9 A Yes, it is in addition to the pension.

10 JUDGE SAINSOT: Okay. Thank you.

11 MS. BARRETT: Can we take just a 5-minute
12 break.

13 JUDGE SAINSOT: Sure.

14 (Whereupon, a recess was taken.)

15 REDIRECT EXAMINATION

16 BY

17 MS. BARRETT:

18 Q Mr. Fruehe, I'm going to show you what I
19 will mark as ComEd Redirect Exhibit 1.

20 JUDGE SAINSOT: We are calling this ComEd
21 Cross-Exhibit 1.

22 MS. BARRETT: I did Redirect Exhibit 1.

1 JUDGE SAINSOT: Redirect is better.

2 BY MS. BARRETT:

3 Q Mr. Fruehe, do you recognize this document?

4 A Yes, I do.

5 Q Can you describe what it is, please.

6 A This is ComEd's data request response to AG

7 1009 that explains how the restricted stock is

8 awarded to employees.

9 MS. BARRETT: We would like to move for the

10 admission of this exhibit into the record.

11 JUDGE SAINSOT: Any objection?

12 (No response.)

13 JUDGE SAINSOT: That being the case, ComEd

14 Redirect Exhibit 1, which is, just for the record,

15 Commonwealth Edison's Company's response to an AG

16 data request, a series of AG Data Requests 10.09 and

17 an attachment. That will be admitted into evidence.

18 (Whereupon, ComEd Redirect

19 Exhibit No. 1 was admitted into

20 evidence.)

21 BY MS. BARRETT:

22 Q I have just one more question for you,

1 Mr. Fruehe. I would like to direct you back to AG
2 Cross-Exhibit 1.

3 Do you still have that?

4 A Yes, I do.

5 Q And this is ComEd's response to AG Request
6 5.02; is that correct?

7 A That's correct.

8 Q This shows a liability of approximately
9 49 million at year end; is that correct?

10 A Well, what it says here is as of January
11 through November the amount was 49,500,000, year-end
12 2009, which is also reflective of that number in the
13 year 2010 was reflected in the updated amount, the
14 51.2million.

15 Q Looking at the 45 million number, what was
16 the impact on the 2010 expense for this accrual?

17 A Well, there was no impact of the
18 49.5 million. The difference between the
19 49.5 million and the 51.2, a small amount of that,
20 approximately \$125,000 was actually included in
21 expense.

22 The rest was -- the rest of that

1 difference was put into a deferred debit for
2 allocation later. But the \$51 million was not
3 included in any shape, manner or form in ComEd's 2010
4 revenue requirement or costs.

5 MS. BARRETT: No further questions.

6 Thank you.

7 JUDGE SAINSOT: Any recross?

8 MS. YU: No, thank you.

9 JUDGE SAINSOT: Okay, Mr. Fruehe. You're
10 excused. Thank you very much.

11 (Witness excused.)

12 JUDGE SAINSOT: So we are meeting at 9:30
13 tomorrow morning and the replies concerning Mr. Box's
14 testimony, we'll get those tomorrow morning, as well,
15 and then we will recess and then come back.

16 Have a nice evening everyone.

17 Thank you.

18 (Whereupon, these
19 proceedings were continued
20 to March 8, 2012 at the hour of
21 9:30 a.m.)
22